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2 Chairman Vincent C. Gray

Councilmember Mary M. Cheh

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4 _____
5 Councilmember David A. Catania

Councilmember Phil Mendelson

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7 _____
8 Councilmember Michael A. Brown

Councilmember Kwame R. Brown

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10 _____
11 Councilmember Jim Graham

Councilmember Jack Evans

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13 _____
14 Councilmember Harry Thomas, Jr.

Councilmember Tommy Wells

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16 _____
17 Councilmember Yvette Alexander

Councilmember Marion Barry

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20 A BILL
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25 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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31 Councilmember Mary M. Cheh, along with Chairman Vincent C. Gray and
32 Councilmembers David A. Catania, Phil Mendelson, Kwame R. Brown, Michael
33 A. Brown, Jim Graham, Jack Evans, Harry Thomas, Jr., Tommy Wells, Yvette
34 Alexander, and Marion Barry, introduced the following bill, which was referred to
35 the Committee on _____.

36
37 To amend the District of Columbia Procurement Practices Act of 1985 to establish an
38 office to responsible for strengthening internal controls for the District against
39 fraud and abuse in procurement, to require the creation of a single procurement
40 transparency website, to mandate and strengthen the training requirements of
41 District procurement personnel, to provide for acquisition planning for District
42 procurements, to enhance contracting enforcement penalties, to include a mandate
43 that says all products and services procured by the District of Columbia shall be
44 products with a lesser or reduced impact on human health and the environment,
45 and to enhance qualification for the Contract Appeals Board.
46

1 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
2 That this act may be cited as the “Omnibus Procurement Reform Amendment Act of
3 2010.”

4 **TITLE I. DEFINITIONS.**

5 Sec. 101. Section 107 of the District of Columbia Procurement Practices Act of
6 1985, effective February 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.07) is
7 amended as follows:

8 (1) A new paragraph (15A) is added to read as follows:

9 “(15A) “Contracting Officer Technical Representative” means a District
10 government employee designated by a contracting officer to be responsible for
11 monitoring a contractor’s progress in fulfilling the requirements specified in a contract.”.

12 (2) A new paragraph (20A) is added to read as follows:

13 “(20A) “Default Environmental Preference Standard” shall mean materials,
14 supplies, services, or commodities that are available through the most current version of
15 the GSA Environmental Specialty Category, or that meet or exceed applicable
16 performance standards or requirements of:

17 “(1) The Federal Energy Management Program;

18 “(2) The Electronic Products Environmental Assessment Tool (EPEAT)
19 Bronze rating;

20 “(3) The U.S. Department of Energy’s ENERGY STAR program;

21 “(4) The U.S. Environmental Protection Agency’s Comprehensive
22 Procurement Guidelines; or

1 “(5) The U.S. Environmental Protection Agency’s Recommended
2 Recovered Materials Content Levels.”.

3 (3) A new paragraph (21A) is added to read as follows:

4 “(21A) “Determinations and Findings” shall mean a form of written approval by
5 the Chief Procurement Officer or her designee as a prerequisite to taking certain contract
6 actions, including the rationale for the method of procurement, the selection of contract
7 type, the selection of a specific vendor, and the basis for the contract price. The
8 “determination” is a conclusion or decision supported by the “findings.” The findings are
9 statements of fact or rationale essential to support the determination. ”.

10 (4) A new paragraph (23F) is added to read as follows:

11 “(23F) “Environmental Analysis” shall mean an analysis of factors related to
12 efficiency, resource conservation, and environmental sustainability. Such an analysis may
13 include consideration of the following:

14 “(1) Initial, operating, and disposal costs, accounting for solid waste
15 disposal, hazardous material disposal, and any potential for reuse or recycling;

16 “(2) Consumption of fuel, energy, water, periodic maintenance,
17 replacement parts, and other inputs;

18 “(3) Outputs, such as wastewater or emissions, which may have a negative
19 effect on human health or the environment;

20 “(4) Components or materials that are hazardous, bio-based, reused, or
21 recycled; and

22 “(5) Risk of injury to human and environmental health.”.

23 (5) A new paragraph (23G) is added to read as follows:

1 “(23G) “Environmental Analysis Statement” shall mean a certification by the
2 Chief Procurement Officer or her designee that the District has conducted an analysis and
3 that:

4 “(1) The product or service is an Environmentally Preferable Product or
5 Service;

6 “(2) No Environmentally Preferable Product or Service exists;

7 or

8 “(3) Procurement of an Environmentally Preferable Product or Service
9 would lead to undue financial hardship.”.

10 (6) A new paragraph (23H) is added to read as follows:

11 “(23H) “Environmentally Preferable Product or Service” shall mean a product or
12 service that has a lesser or reduced effect on human health and the environment when
13 compared with competing products that serve the same purpose. The comparison shall
14 include raw materials acquisition, production, manufacturing, packaging, distribution,
15 reuse, operation, maintenance, or disposal of the product.”.

16 (7) A new paragraph (29D) is added to read as follows:

17 “(29D) “Intensive Procurement” shall mean any procurement that involves the
18 greatest level of environmental impact, energy use, operating lifespan, maintenance and
19 operating costs, including the procurement of standard commercial vehicles; heating,
20 ventilating, air conditioning, and refrigeration systems; commercial- and industrial-grade
21 machinery; and food-service equipment.”.

22 (8) A new paragraph (30-i) is added to read as follows:

1 “(30-i) “Machine-readable and searchable” means electronic text that is stored as
2 strings of characters and that can be displayed in a variety of formats.”.

3 **TITLE II. OFFICE OF THE PROCUREMENT OMBUDSMAN.**

4 Sec. 201. The District of Columbia Procurement Practices Act of 1985, effective
5 February 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), is amended
6 by adding a new section 1009 to read as follows:

7 “Sec. 1009. Establishment of the Office of the Procurement Ombudsman.

8 “(a) There is established as an independent office, the Office of the Procurement
9 Ombudsman within the government of the District of Columbia to provide oversight and
10 review of the procurement process.

11 “(b) The duties of the Office of the Procurement Ombudsman shall include:

12 “(A) Conducting procurement related audits and reviews for compliance
13 with District and federal statutes, policies, and procedures;

14 “(B) Detecting fraud, waste, and abuse in procurement operations;

15 “(C) Assessing the effectiveness and efficiency of District agencies’
16 procurement operations;

17 “(D) Ensuring that agencies are maintaining appropriate records; and

18 “(E) Issuing reports to the Council and Mayor on procurement related
19 issues and concerns.

20 “(c) There shall be a Director of the Office of the Procurement Ombudsman who
21 shall be appointed by the Mayor with the advice and consent of the Council, and shall
22 serve a 5 year term, removable only for cause. The Director of the Procurement
23 Monitoring Office may serve no more than 2 terms.

1 “(d) The Office of the Procurement Ombudsman shall have access to all OCP and
2 other District agency procurement records and databases. Each District employee and
3 each District vendor shall cooperate with the Procurement Ombudsman and provide such
4 information as the Procurement Ombudsman may request.

5 “(e)(1) During the conduct of an investigation, the Director of the Office of the
6 Procurement Ombudsman, or her designee, may administer oaths to witnesses and issue
7 subpoenas for witnesses to appear and be examined under oath, or to produce any books,
8 papers, documents, or other objects designated therein or any other record that are
9 relevant to an investigation.

10 “(2) If any witness having been personally summoned shall neglect or
11 refuse to obey the subpoena issued pursuant to paragraph (e)(1) of this section, the
12 Director of the Office of the Procurement Ombudsman may report that fact to the
13 Superior Court of the District of Columbia or one of the judges thereof and said Court, or
14 any judge thereof, is empowered to compel obedience to the subpoena to the same extent
15 as witnesses may be compelled to obey the subpoenas of that Court.

16 “(f) The Office of the Procurement Ombudsman shall issue and transmit to the
17 Mayor and the Council, on January 1st of each year, a report on the operations of the
18 Office.

19 “(g) This section shall apply as of October 1, 2012.”.

20 **TITLE III. TRANSPARENCY IN CONTRACTING.**

21 Sec. 301. The District of Columbia Procurement Practices Act of 1985, effective
22 February 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), is amended as
23 follows:

1 (a) Section 203 (D.C. Official Code § 2-302.03) is amended by adding new
2 subsection (e) to read as follows:

3 “(e) The CPO shall be responsible for establishing and maintaining a single
4 procurement transparency website to ensure that all publicly available information
5 regarding District procurement is easily accessible in one online location. The
6 information shall be made available in machine-readable and searchable format, and shall
7 include the following procurement information:

8 “(1) The legal authority and regulations that guide procurement for all
9 District agencies and instrumentalities, including those exempt from the authority of the
10 Procurement Practices Act;

11 “(2) The names of all personnel with delegated contracting authority,
12 including Contracting Officers and Contracting Officer Technical Representatives;

13 “(3) For all contracts in excess of \$100,000, a copy of the contract and any
14 determinations and findings, contract modifications, change orders, solicitations, or
15 amendments associated with the contract, including those made by District agencies
16 exempt from the authority of the Procurement Practices Act. This information shall be
17 retained on the internet for at least the life of the underlying contract or 5 years,
18 whichever is longer.”.

19 (b) Section 305 (D.C. Official Code § 2-303.05) is amended by adding new
20 subsection (c) to read as follows:

21 “(c) Notice of intent to enter into a sole source contract shall be made available on
22 the internet at least 14 days prior to award. The notice shall include:

23 “(1) The sole source procurement justification;

1 “(2) A description of the item to be procured;
2 “(3) The intended sole source contractor; and
3 “(4) A copy of the contract; provided, that the contract shall be made
4 available online within 7 days of the contract award.”.

5 (c) Section 312 (D.C. Official Code § 2-303.12) is amended by adding a new
6 subsection (c) to read as follows:

7 “(c) Notice of all emergency procurements shall be made available online no
8 more than 7 days after the contract is awarded. The notice shall include:

9 “(1) The emergency procurement justification;

10 “(2) A description of the item to be procured;

11 “(3) The designated contractor; and

12 “(4) A copy of the contract.”.

13 **TITLE IV. CONTRACTING PERSONNEL TRAINING.**

14 Sec. 401. Section 1101 (D.C. Official Code § 2-311.01) of the District of
15 Columbia Procurement Practices Act, effective February 21, 1988 (D.C. Law 6-85; D.C.
16 Official Code § 2-301.01), is amended to read as follows:

17 “(a) OCP shall establish and administer a system of training, continuing
18 education, and certification for District contracting personnel. OCP shall adopt rules to
19 administer this section, including rules relating to monitoring compliance with the
20 continuing education requirements of this section.

21 “(b) All District contracting personnel, including all District agencies and
22 instrumentalities, shall receive the training and continuing education to the extent
23 required by the CPO.

1 “(c) A District agency employee required to receive training shall not authorize
2 purchases by an agency unless the employee has received the required training or
3 received the equivalent training from a national association recognized by OCP. The
4 equivalent training may count, as provided by subsection (e) of this section, toward the
5 continuing education requirement.

6 “(d) There shall be a fee set in the amount of one-half of one percent on each
7 contract entered into on behalf of the District.

8 “(e) OCP shall provide at least 3 levels of training as follows:

9 “(1) A basic training level will have an introduction to contracting
10 purchasing methods, ethical issues affecting contracting decisions, and instruction in any
11 other processes and issues that OCP considers appropriate for introductory contracting
12 training.

13 “(2) A second training level will have an advanced instruction in formal
14 and informal bidding methods, introduction to negotiation methods, instruction in writing
15 specifications, and instruction in any other processes and issues the OCP considers
16 appropriate for the second level of contracting training.

17 “(3) A third training level will have an introduction to complex
18 negotiations, instruction in the criteria for determining which product or service offers the
19 best value for the District, and instruction in any other processes and issues that OCP
20 considers appropriate for advanced contracting training.

21 “(f) OCP shall require a reasonable number of hours of continuing education to
22 maintain a certification level. OCP shall allow attendance at equivalent certification
23 training recognized by OCP to count toward the required number of hours. Maintenance

1 of the certification level may be by yearly renewal or another reasonable renewal period
2 comparable to nationally recognized certification requirements.

3 “(g) The prerequisites for receiving a level 2 certification must include
4 completion of the basic training level, passage of a written examination, and a minimum
5 number of years of contracting experience prescribed by OCP.

6 “(h) The prerequisites for receiving a level 3 certification must include
7 completion of the second training level, passage of a written examination, and a
8 minimum number of years of contracting experience prescribed by OCP.

9 “(i)(1) There is established as a nonlapsing fund, the Contracting and Procurement
10 Reserve Training Fund (“Training Fund”), which shall be used solely for the training of
11 District government employees in the area of contracting and procurement. The Training
12 Fund shall be funded by a one-half of one percent fee collected on contracts entered into
13 in the District.

14 “(2) All funds deposited into the Training Fund, and any interest earned
15 thereon, shall not revert to the unrestricted fund balance of the General Fund of the
16 District at the end of a fiscal year, or at any other time, but shall be continually available
17 for the uses and purposes set forth in paragraph (i)(1) of this section without regard to
18 fiscal year limitation, subject to authorization by Congress.”.

19 **TITLE V. ACQUISITION PLANNING.**

20 Sec. 501. The District of Columbia Procurement Practices Act, effective February
21 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.01) is amended as by adding a new
22 section 1105 to read as follows:

23 “Sec. 1105. Acquisition planning.

1 “(a) For each contract over \$100,000 currently in effect, each District agency shall
2 submit to the CPO a complete chronological list of the expiration date of each contract
3 current in effect, identifying the contracting officer, the contracting officer’s technical
4 representative, and any other agency personnel responsible for determining the
5 continuing need for the goods or services upon expiration of the contract.

6 “(b) For each contract over \$500,000 currently in effect, each agency shall
7 designate the office and specific individual responsible for planning a follow-on contract.
8 The CPO shall concur in the designation of the individual official. The agency shall
9 report any resignation or changes in assignment within 20 days of any change.

10 “(c) Prior to each budget submission, the Mayor shall submit to the Council a
11 schedule listing each contract certified by each agency head and the CPO, showing the
12 month in which the agency expects to award each contract projected to be in excess of
13 \$100,000 during the fiscal year.

14 “(d) In addition to submission of the expected contract award dates in the year of
15 the budget submission pursuant to subsection (c) of this section, the CPO shall submit to
16 the Council a schedule of the contract awards over \$100,000 made during the previous
17 fiscal year showing the expected date for each contract shown in the schedule
18 accompanying the previous year’s budget submission and the actual award date.”.

19 **TITLE VI. ENHANCED CONTRACTING ENFORCEMENT.**

20 Sec. 601. Section 804(a)(2) of the District of Columbia Procurement Practices
21 Act, effective February 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-308.04(a)(2)),
22 is amended by striking the phrase “3 years” and inserting “5 years” in its place.

23 **TITLE VII. GREEN PROCUREMENT.**

1 Sec. 701. The District of Columbia Procurement Practices Act, effective February
2 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.01), is amended by adding a new
3 section 1104 (D.C. Official Code § 2-311.04) to read as follows:

4 “Sec. 1104. Green procurement authority.

5 “(a) Except for any contract issued pursuant to section 312, before entering into
6 any contract in excess of \$100,000, the District shall issue an Environmental Analysis
7 Statement; provided, that no Environmental Analysis Statement shall be required for
8 procurements that conform to an applicable Default Environmental Preference Standard.

9 “(b) Notwithstanding any other provision of law, a unique Environmental
10 Analysis Statement shall be required for each Intensive Procurement.”

11 “(c) The requirements of paragraph (1) shall be satisfied if the District’s
12 solicitation on the procurement included a requirement that a vendor provide an
13 Environmentally Preferable Product or Service.”.

14 “(d) OCP shall:

15 “(1) Revise bid documents and contract language to implement this policy;

16 and

17 “(2) Research opportunities for procurement of EPPS and communicate
18 these opportunities to appropriate District agencies. These opportunities may include as
19 applicable:

20 “(A) Initial, operating, and disposal cost accounting for solid waste
21 disposal, hazardous materials disposal, and any potential for reuse or recycling;

22 “(B) Consumption of fuel, energy, water, periodic maintenance,
23 replacement parts, and other inputs;

1 “(C) Outputs such as wastewater or emissions, which may have a
2 negative effect on human health or the environment;

3 “(D) Components or materials that are hazardous, bio-based,
4 reused, or recycled; and

5 “(E) Risk of injury to human and environmental health.”.

6 “(e) Each District agency shall designate personnel to evaluate additional
7 opportunities for the purchase of EPPS.”.

8 “(f) Within one year after the effective date of this act, and annually thereafter,
9 OCP shall prepare and submit to the Council a report detailing the progress of this policy,
10 including the following elements:

11 “(1) Total contracting dollars and percentage of contracting dollars spent
12 on EPPS;

13 “(2) Success and challenges to implementing the policy;

14 “(3) Changes to policy or standards.”.

15 **TITLE VIII. CONTRACT APPEALS BOARD REFORM.**

16 Sec. 801. The District of Columbia Procurement Practices Act, effective February
17 21, 1988 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), is amended as follows:

18 (a) Subsection 902(b) (D.C. Official Code § 2-309.02(b)) is amended to read as
19 follows:

20 “(b) The chairperson and other members of the Board shall be attorneys licensed
21 to practice law in the District who shall have no fewer than 5 years experience in public
22 contract law.

1 (b) Subsection 903(b) (D.C. Official Code § 2-309.02 (b)) is amended by adding
2 a sentence to read as follows: “With the agreement of the parties, the Board may provide
3 alternate dispute resolution services.”.

4 **TITLE IX. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.**

5 Sec. 901. Fiscal impact statement.

6 The Council adopts the fiscal impact statement in the committee report as the
7 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
8 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
9 206.02(c)(3)).

10 Sec. 902. Effective date.

11 This act shall take effect following approval by the Mayor (or in the event of veto
12 by the Mayor, action by the Council to override the veto), a 30-day period of
13 Congressional review as provided in section 602(c) (1) of the District of Columbia Home
14 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)
15 (1)), and publication in the District of Columbia Register.