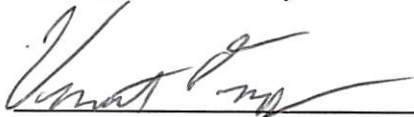


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2 Councilmember Mary Cheh



Chairman Phil Mendelson

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4 Councilmember Vincent Orange



Councilmember Anita Bonds

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6 Councilmember David Grosso



Councilmember Elissa Silverman



Councilmember Charles Allen

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18 A BILL
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24 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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29 Chairman Mendelson introduced the following bill which was _____.

30
31 To amend the Procurement Practices Reform Act of 2010 to modify the procurement authority
32 exemption for the Department of General Services, establish additional transparency in
33 Council contract summaries, amend requirements for the solicitation and award of
34 privatization contracts, establish restrictions on the performance of inherently
35 governmental functions by contractors, establish an Ombudsman for contracting and
36 procurement, prohibit procurement lobbying, establish evaluation criteria related to
37 contractor past performance, require a government cost estimate for construction projects,
38 require payment bonds for service contracts, modify requirements for posting contract
39 information on the Internet, require additional information on acquisition plans, and
40 establish goals for strategic sourcing.

41
42 BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
43 resolution may be cited as the "Procurement Integrity, Transparency, and Accountability
44 Amendment Act of 2015."

45 **Sec. 2. Department of General Services authority clarification**

46 (a) Section 201 of the Procurement Practices Reform Act of 2010, effective April 8,
47 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*) is amended as follows:

48 (1) subsection (b)(9) is amended by replacing the phrase “Counsel;” with the
49 phrase “Counsel; and”.

50 (2) subsection (b)(10) is amended by replacing the phrase “Council; and” with
51 the phrase “Council.”.

52 (3) subsection (b)(11) is repealed.

53 (4) subsection (d) is amended to read as follows:

54 “(e) Except regarding agencies exempted in section 105(c) and 201(b) and roads,
55 bridges, other transportation systems, and facilities and structures appurtenant to roads, bridges,
56 and other transportation systems, the Department of General Services shall have procurement
57 authority for construction and related services under subchapter VI of this chapter, and
58 operations and maintenance of facilities, real estate management, utilities, and security pursuant
59 to section 1023(5) of the Department of General Services Establishment Act of 2011, effective
60 September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-551.01 *et seq.*).”.

61 (5) subsection (e) is amended to read as follows:

62 “(e) Except as otherwise provided section 105(b), the CPO may review and monitor
63 procurements, including for construction and related services under Title VI, by any agency,
64 instrumentality, employee, or official exempt under this chapter or authorized to procure
65 independently of OCP.”.

66 (b) Section 1023 of the Department of General Services Establishment Act of 2011,
67 effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-551.01 *et seq.*) is
68 amended as follows:

69 (1) Paragraph 5(D) is amended by replacing the phrase “utility contracts;” with
70 the phrase “utility contract; and”.

71 (2) Paragraph 5(E) is amended by replacing the phrase “security services; and”
72 with the phrase “security services.”.

73 (3) Paragraph 5(F) is repealed.

74 **Sec. 3. Council review of contracts.**

75 (a) Section 202(c) of the Procurement Practices Reform Act of 2010, effective April 8,
76 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

77 (1) Paragraph (1) is amended by replacing the phrase “and type of contract;” with
78 the phrase “type of contract, and the source selection method;”

79 (2) A new paragraph (1A) is inserted to read as follows:

80 “(1A) For a contract containing option years, the contract amount for the base
81 year and for each option year, and an explanation of the reasons for differing contract amounts in
82 the options, if the amounts are different;”.

83 (3) A new paragraph (1B) is inserted to read as follows:

84 “(1B) If the contract is to definitize a letter contract or a contract on an emergency
85 basis, provide:

86 “(A) the date on which the letter contract or emergency contract was
87 executed;

88 “(B) how many times the letter contract or emergency contract has been
89 extended; and

90 “(C) the value of the goods and services provided to date under any
91 extension.”.

92 (4) Paragraph (3) is amended to read as follows:

93 “(3)(A) The selection process, including the number of offerors, the evaluation
94 criteria, and the evaluation results, including price, and technical or quality, and past
95 performance components.

96 “(B) If the contract was awarded on a sole source basis, the date on which
97 a competitive procurement for the goods or services to be provided under the contract was last
98 conducted and date of the resulting award, and a detailed explanation of why a competitive
99 procurement is not feasible;

100 (5) A new paragraph (3A) is inserted to read as follows:

101 “(3A) A description of any bid protest and resolution of a protest through either
102 litigation, withdrawal, or corrective action. Such description shall include the identity of any
103 protestor and the grounds alleged in the protest, deficiencies identified in the protest;”.

104 (6) A new paragraph (3B) is inserted to read as follows:

105 “(3B) A summary of any review or reports on the proposed contract, or any
106 previous contract for substantially the same goods or services procured from the same vendor”.

107 (7) Paragraph (4) is amended by replacing the phrase “prior performance on
108 contracts with the District government” with the phrase “performance on past or current
109 government or private sector contracts for efforts similar to the District’s requirement under the
110 proposed contract;”.

111 (8) A new paragraph (4A) is inserted to read as follows:

112 “(4A) A summary of the subcontracting plan required under Section 2346 of the
113 Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,
114 effective October 20, 2005 (D.C. Law 16-33, § 2301, D.C. Code § 2-218.46).”, including the
115 name of each subcontractor, whether it is a certified local, small, or disadvantaged business
116 enterprise, the percentage of the expected value of the contract to be awarded each subcontractor,
117 and what goods or services each subcontractor will be expected to provide;”.

118 (9) A new paragraph (5A) is inserted to read as follows:

119 “(5A) The amount and date of any funds expended by the District on the contract
120 or option year before submission of the contract to the Council for its review pursuant to section
121 202;”.

122 (10) Paragraph (11) is amended by replacing the phrase “debarment; and” with
123 the phrase “debarment;”.

124 (11) Paragraph (12) is amended to read as follows:

125 “(12) Where the contract, and any amendments or modifications, if executed, will
126 be made available online; and.

127 (12) A new paragraph (13) is inserted to read as follows:

128 “(13) Where the original solicitation, and any amendments or modifications, can
129 be found online.”.

130 (b) A new Section 202(c-1) is added to the Procurement Practices Reform Act of 2010,
131 effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), to read as
132 follows:

133 “(c-1) Proposed changes to the contract scope or amount, including options years,
134 modifications, change orders, or other changes affecting the price of the contract, submitted
135 pursuant to this section after the date of the beginning of the period of performance resulting
136 from the changes, shall include the summary required under subsection (c) and shall also
137 include:

138 “(1) The period of performance for the change, including date on which the
139 change was effective;

140 “(2) The value of any work or services performed during a period of performance
141 for which the Council has not provided approval, disaggregated by each such modification or
142 change if more than one modification or change are being aggregated for Council review;

143 “(3) The aggregate changed contract amount since the original award;

144 “(4) The date on which the contracting officer was notified of the change;

145 “(5) The reason why the change was sent to the Council for approval after the
146 change had been made;

147 “(6) The reason for the change; and

148 “(7) The legal, regulatory, or contractual authority for the change.”

149 (c) A new Section 202(c-2) is added to the Procurement Practices Reform Act of 2010,
150 effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), to read as
151 follows:

152 “(c-2) Any contract submitted to the Council for its review in accordance with
153 subsection (c-1) shall be referred to the Inspector General to examine the contract for possible
154 corruption, mismanagement, waste, fraud, or abuse pursuant to Section 208(a-1)(2) of the

155 District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law
156 6-85; D.C. Official Code § 1-301.115a(a-1)(2)).”.

157 **Sec 4. Privatization contracts.**

158 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
159 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

160 (1) Section 202(c) is amended as follows:

161 (A) In paragraph 11, by replacing the phrase “reasons for debarment; and”
162 and replacing it with “reasons for debarment;”.

163 (B) In paragraph 12, by replacing the phrase “available online.” With
164 “available online; and”

165 (C) by adding a new paragraph (11A) to read as follows:

166 “(11A) Any determination and findings issued in relation to the contract’s
167 formation, including under section 205.”.

168 (2) Section 205 is amended to read as follows:

169 “Sec. 205. Privatization contracts.

170 “(a) A privatization contract shall meet the following requirements:

171 “(1) Except as provided for under subsection (d), a contract shall not cause the
172 displacement of District government employees including by layoff, demotion, involuntary
173 transfer to a new class, involuntary transfer to a new location requiring a change of residence,
174 and time base reductions. Displacement does not include changes in shifts or days off, nor does it
175 include reassignment to other positions within the same class and general location.

176 “(2) The economic advantage of the contract, as indicated a determination and
177 findings issued pursuant to subsection (b), shall be significant enough to justify using a personal
178 services contract instead of District government employees.

179 “(3) The economic advantage of the contract is not outweighed by the public’s
180 interest in having a particular function performed directly by District employees.

181 “(4) The contract shall be awarded through a publicized, competitive bidding
182 process pursuant to Title IV of this act.

183 “(5) Any contract shall include specific provisions pertaining to the qualifications
184 of the staff that will perform the work under the contract and affirmation that the contractor’s
185 hiring practices meet applicable District standards.

186 “(b) Before a solicitation for any privatization contract, the Mayor, instrumentality, or
187 independent agency shall:

188 “(1) Issue a draft determination and findings demonstrating the cost of providing
189 the service by a contractor will be at least 5% less than if the service were provided by District
190 government employees. Such determination and finding shall include, at a minimum, the
191 following:

192 “(A) The overall cost of a contractor providing a service versus any
193 continuing costs that would be directly associated with the contracted function

194 “(B) Personal services costs including, salary and fringe benefits of the
195 contractor or District employee providing the service;

196 “(C) Non personal services costs including rent, equipment, utilities, and
197 other materials attributable to a contractor or District employee providing the service;

198 “(D) Any additional costs built into a service contract;

199 “(E) Costs related the administration, oversight, and supervision by
200 District government personnel of a privatization contract and contractors;

201 “(F) A description of the expected impact of a privatization contract on
202 the quality of goods or services provided to or on behalf of the District government;

203 “(G) The number of District government employees necessary to perform
204 the service proposed to be contracted; and

205 “(H) The number of District government employees that would be
206 displaced by the contract.

207 “(2) Request an analysis by the Chief Financial Officer of whether the costs in the
208 determination and findings can be substantiated.

209 “(3) Share the determination and findings with employees who could be displaced
210 as a result of the contract and any labor unions or groups representing those employees to solicit
211 their comments.

212 “(4) Issue a final determination and findings which incorporates the full analysis
213 by the Chief Financial Officer, and a summary of comments provided pursuant to paragraph (3),
214 unless the Mayor, instrumentality, or independent agency rescinds the determination and
215 findings. Each final determination and findings shall be made publicly available online before
216 any solicitation based on the determination and findings is issued.

217 “(c) If the Mayor, instrumentality, or independent agency solicit a privatization contract
218 which would displace District government employees, such employees or a person or entity
219 representing such employees may submit a bid to perform the services as either District
220 government employees, or as a private-entity. Any bid submitted pursuant this subsection shall
221 be deemed responsive under Title IV of this act. The Chief Procurement Officer shall make

222 available reasonable resources to assist District government employees, or an entity representing
223 such employees in formulating a bid.

224 “(d) If a privatization contract that displaces District government employees is awarded:

225 “(1) The contractor shall offer to the displaced employee a right of first refusal to
226 employment by the contractor, in a comparable available position for which the employee is
227 qualified, for at least a 6-month period during which the employee shall not be discharged
228 without cause;

229 “(2) Any District employee who is displaced as a result and is hired by the
230 contractor who was awarded the contract, shall be entitled to the benefits provided by the Service
231 Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 351 *et seq.*);

232 “(3) If the employee's performance during the 6-month transitional employment
233 period described in paragraph (1) of this subsection is satisfactory, the contractor shall offer the
234 employee continued employment under terms and conditions established by the contractor;

235 “(4) The Mayor, instrumentality, or the independent agency head shall make
236 efforts to assist affected District government employees and to promote employment
237 opportunities for District residents with the contractor. These efforts shall include:

238 “(A) Consulting with union representatives and District government
239 employees who would be affected by the privatization contract;

240 “(B) Providing prior notification of at least 30 days of any adverse impact
241 of a privatization contract to District government employees who would be affected by the
242 contract, including notification to a labor organization certified as the exclusive representative of
243 employees affected by the contract;

244 “(C) Providing alternative employment in the District government to
245 displaced District government employees if there are unfilled positions for which those
246 employees are qualified; and

247 “(D) Encouraging the contractor to offer employment to qualified District
248 residents before offering employment to qualified nonresidents.

249 “(e)(1) Any privatization contract shall incorporate specific performance standards and
250 targets.

251 “(2) The contractor shall submit reports, as required by the contract, to the District
252 government contracting officer and the Chief Financial Officer on the contractor's compliance
253 with the specific performance criteria; and

254 “(3) The contract may be canceled if the contractor fails to comply with the
255 performance criteria set out in the contract.

256 “(f) An agency shall not attempt to circumvent the requirements of this section by
257 eliminating the provision of goods or services by the agency before procuring substantially the
258 same goods or services from a person who is not part of the District government.

259 “(g) A privatization contract shall not be solicited or awarded for any services or
260 functions that are inherently governmental.

261 “(h)(1) The Mayor, instrumentality, or the independent agency with authority over a
262 contract shall apply the provisions of paragraphs (b)(1), (2), and (3) of this section to any
263 privatization contract in place as of the effective date of the Procurement Integrity,
264 Transparency, and Accountability Amendment Act of 2015.

265 “(2) Determinations and findings resulting from paragraph (1) shall be made
266 publicly available and sent to the Council.

267 “(i)(1) The Auditor shall review selected privatization contracts, which shall be chosen
268 based on the dollar value and scope of the contract, its potential impact on the health and safety
269 of District residents, its potential impact on economic development and employment
270 opportunities in the District, and other factors deemed appropriate by the Auditor.

271 “(2) The Auditor shall issue an annual report to the Mayor and the Council on the
272 contracts reviewed pursuant to paragraph (1) analyzing for each contract whether it is achieving:

273 “(A) The 5% savings target set forth in subsection (b)(1) of this section;
274 and

275 “(B) The performance standards and targets incorporated into the contracts
276 as required under subsection (e) of this section.

277 “(3) The Auditor may report that the cost and performance data for the selected
278 contracts are inconclusive, but if the District has failed to collect, maintain, or provide cost and
279 performance data, the Auditor may reasonably conclude that the cost or performance targets are
280 not being met.

281 “(4) If the Auditor finds in the report issued pursuant to paragraph (2) of this
282 section that a privatization contract has not met the cost savings or performance standards, the
283 Mayor, or independent agency head shall review the merits of cancelling the privatization
284 contract and performing the work with District employees and report to the Council on the
285 conclusion of their review.

286 “(j) The requirements of this section shall not apply to:

287 “(1) A contract for a new function for which the Council has specifically
288 mandated or authorized the performance of the work by independent contractors.

289 “(2) Services that cannot be performed satisfactorily by District government
290 employees, or are of such a highly specialized or technical nature that the necessary expert
291 knowledge, experience, and ability, are not available through District employees.

292 “(3) Contracts for staff augmentation services to be provided under the contract
293 will be for less than one year and contain no options.

294 “(4) Contracts for services that are incidental to a contract for the purchase or
295 lease of real or personal property such as contracts to maintain office equipment or computers
296 that are leased or rented.

297 “(5) Contracts that are necessary to protect against a conflict of interest or to
298 insure independent and unbiased findings in cases where there is a clear need for a
299 different, outside perspective.

300 “(6) Contracts entered in to pursuant to section 201(c) of this act.

301 “(7) Contracts that will provide equipment, materials, facilities, or support
302 services that could not feasibly be provided by the District in the location where the services are
303 to be performed.

304 “(8) Contracts that provide for training courses for which appropriately qualified
305 District employees are not available.

306 “(9) Contracts for services that are of such an urgent, temporary, or occasional
307 nature that the delay incumbent in their implementation under this section would frustrate their
308 very purpose.

309 **Sec. 5. Inherently governmental functions.**

310 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
311 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

312 (1) A new paragraph 34B is added to section 104 to read as follows:

313 “(34B) “Functions closely associated with inherently governmental functions”

314 means functions not considered to be inherently governmental functions but functions that may

315 approach being in that category because of the nature of the function, the manner in which the

316 contractor performs the contract, or the manner in which the Government administers contractor

317 performance, including, but not limited to the criteria set forth under section 205b.”.

318 (2) A new paragraph 37B is added to section 104 to read as follows:

319 “(37B) “Inherently governmental function” means a function that is so intimately

320 related to the public interest as to require performance by District government employees,

321 including, but not limited to the criteria under section 205b.”.

322 (3) A new section 205b is added to read as follows:

323 “Sec. 205b. Inherently governmental functions.

324 “(a) No District government contract may be awarded to perform any work or service that

325 is an inherently governmental function.

326 “(b) The District government may enter into a contract for the performance of functions

327 closely associated with inherently governmental functions only if the contracting officer for the

328 contract ensures that:

329 “(1) Appropriate District government employees cannot reasonably perform the

330 functions;

331 “(2) Appropriate District government employees supervise contractor

332 performance of the contract and perform all inherently governmental functions associated with

333 the functions to be performed under the contract; and

334 “(3) The agency for which the contract is being performed addresses any
335 potential organizational conflicts of interest of the contractor in the performance of the functions
336 under the contract.

337 “(b)(1) In general, the term inherently governmental function includes activities that
338 require either the exercise of discretion in applying District government authority or the making
339 of value judgments in making decisions for the District government, including judgments
340 relating to monetary transactions or benefits.

341 “(2) An inherently governmental function involves, among other things, the
342 interpretation and execution of the laws of the District to:

343 “(A) bind the District to take or not to take some action by contract,
344 policy, regulation, authorization, order, or otherwise;

345 “(B) appoint, direct, or control officials or employees of the District; or

346 “(C) exert ultimate control over the acquisition, use, or disposition of the
347 property, real or personal, tangible or intangible, of the District, including the control, or
348 disbursement of appropriated and other District funds.

349 “(d) Inherently governmental function includes the following, in addition to any other
350 function the Mayor determines through a rulemaking:

351 “(1) The direct conduct of criminal investigations.

352 “(2) The performance of adjudicatory functions other than those relating to
353 arbitration or other methods of alternative dispute resolution.

354 “(3) The command of public safety, fire, emergency response, and homeland
355 security employees;

356 “(4) The determination of agency policy, such as determining the content and
357 application of regulations, among other things.

358 “(5) The direction and control of District employees.

359 “(6) The selection or non-selection of individuals for District government
360 employment, including the interviewing of individuals for employment.

361 “(7) The approval of position descriptions and performance standards for District
362 government employees.

363 “(8) The determination of what District government property is to be disposed of
364 and on what terms, except that the Mayor or the Mayor’s designee, may give contractors
365 authority to dispose of property at prices within specified ranges and subject to other reasonable
366 conditions deemed appropriate;

367 “(9) In procurement activities with respect to prime contracts:

368 “(A) Determining what supplies or services are to be acquired by the
369 Government, except that the Mayor or the Mayor’s designee, may give contractors authority to
370 acquire supplies at prices within specified ranges and subject to other reasonable conditions
371 deemed appropriate;

372 “(B) Participating as a voting member on any source selection boards;

373 “(C) Approving any contractual documents, to include documents defining
374 requirements, incentive plans, and evaluation criteria;

375 “(D) Awarding contracts;

376 “(E) Administering contracts, including ordering changes in contract
377 performance or contract quantities, taking action based on evaluations of contractor performance,
378 and accepting or rejecting contractor products or services;

379 “(F) Terminating contracts;

380 “(G) Determining whether contract costs are reasonable, allocable, and
381 allowable; and

382 “(H) Evaluating a contractor’s performance when it is to be used to
383 determine any payment to the contractor.

384 “(10) The determination of budget policy, guidance, and strategy.

385 “(11) The collection, control, and disbursement of fees, royalties, fines, taxes, and
386 other public funds, unless authorized by the Council;

387 “(12) The drafting of Council testimony, responses to Council correspondence, or
388 agency responses to audit reports from the Inspector General or the Auditor.

389 “(e) The term inherently governmental function does not normally include:

390 “(1) gathering information for or providing advice, opinions, recommendations,
391 or ideas to District government employees or officials; or

392 “(2) any function that is primarily ministerial and internal in nature, such as
393 building security, mail or courier services, operations and maintenance services, facilities
394 operations, vehicle fleet management.

395 “(f) Functions closely associated with inherently governmental functions includes the
396 following, in addition to any other function the Mayor determines through rulemaking:

397 “(1) Services that involve or relate to budget preparation.

398 “(2) Services that involve or relate to government reorganization and planning
399 activities.

400 “(3) Services that involve or relate to the development of regulations.

401 “(4) Services that involve or relate to the evaluation of another contractor’s
402 performance.

403 “(5) Services in support of acquisition planning.

404 “(6) Contractors providing assistance in contract management (such as where the
405 contractor might influence official evaluations of other contractors).

406 “(7) Contractors providing assistance in technical evaluation of contract
407 proposals.

408 “(8) Contractors providing assistance in the development of statements of work.

409 “(9) Contractors providing support in preparing responses to Freedom of
410 Information Act requests.

411 “(10) Contractors working in any situation that permits or might permit them to
412 gain access to confidential business information and/or any other sensitive information.

413 “(11) Contractors providing information regarding agency policies or regulations,
414 such as attending conferences on behalf of an agency, conducting community relations
415 campaigns, or conducting agency training courses.

416 “(12) Contractors participating in any situation where it might be assumed that
417 they are agency employees or representatives.

418 “(13) Contractors participating as technical advisors to a source selection board or
419 participating as voting or nonvoting members of a source evaluation board.

420 “(14) Contractors providing inspection services.

421 “(15) Contractors providing legal advice and interpretations of regulations and
422 statutes to Government officials.

423 “(g) The Mayor may waive compliance with any of the requirements of this section for
424 any contract in effect upon the effective date of the Procurement Integrity, Transparency, and
425 Accountability Amendment Act of 2015, and for any option year exercised under such contract,
426 so long as the option year was contained in the contract as of the effective date of the
427 Procurement Integrity, Transparency, and Accountability Amendment Act of 2015.

428 “(h) Notwithstanding subsection (g), the requirements of this section shall apply to any
429 contract or option year in effect on the date five years after the effective date of the Procurement
430 Integrity, Transparency, and Accountability Amendment Act of 2015”.

431 **Sec. 6. Ombudsman for contracting and procurement**

432 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
433 371; D.C. Official Code § 2-351.01 *et seq.*), is amended by adding a new section 207 to read as
434 follows:

435 “Sec. 207. Ombudsman for contracting and procurement.

436 “(a) There is established within the Office of Contracting and Procurement an Office of
437 Ombudsman for Contracting and Procurement which shall be headed by an ombudsman
438 appointed by the Mayor after consultation with the CPO, agency heads of agencies independent
439 of the CPO’s authority, the Director of the Department of Small and Local Business
440 Development, and contracting and procurement stakeholders in the private-sector representing
441 prime contractors and subcontractors doing work and providing services for the District.

442 “(b) The Ombudsman shall:

443 “(1) Serve as a vehicle for contractors and subcontractors performing work or
444 providing services under a District contract to communicate their complaints and concerns
445 regarding contracting and procurement through a single office;

446 “(2) Respond to complaints and concerns in a timely fashion with accurate and
447 helpful information;

448 “(3) Determine the validity of any complaint quickly and professionally;

449 “(4) Generate options for a response and offer a recommendation among the
450 options;

451 “(5) Except when the parties are involved in legal or administrative proceedings,
452 attempt to informally facilitate a resolution of the complaint between the contracting officer, the
453 prime contractor, and the subcontractor as appropriate;

454 “(6) Refer complainants to the Contract Appeals Board, the Department of Small
455 and Local Business Development, the contracting officer administering the contract, the
456 Inspector General, or the Attorney General, when appropriate;

457 “(7) Recommend to the CPO the suspension or debarment of a contractor or
458 subcontractor upon a finding of a pattern of non-compliance with District laws or regulations, or
459 other repeated bad behaviors by a contractor or subcontractor;

460 “(8) Recommend to the Director of the Department of Small and Local Business
461 Development decertification of a certified business enterprise upon a finding of a pattern of non-
462 compliance with District laws or regulations, or other repeated bad behaviors by a contractor or
463 subcontractor; and

464 “(9) Identify systemic concerns and recommend to the Mayor and the Council
465 policy changes, and strategies to improve the contracting and procurement process.”.

466 **Sec. 7. Procurement lobbying.**

467 Section 401 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
468 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*) is amended by adding s new
469 subsection (c) to read as follows:

470 “(c)(1) A prospective contractor, or any person associated therewith, shall not attempt to
471 influence a District employee or official with respect to source selection.

472 “(2) A bid or offer associated with a violation of subsection (c)(1) of this section
473 may be rejected, unless the Director determines that it is in the best interest of the District not to
474 reject the bid or offer.

475 “(3) This subsection shall not apply to a prospective contractor, or any person
476 associated therewith, in relation to communications with Councilmembers or their staff with
477 regarding a contract recommend for award by the Mayor that is before the Council for review in
478 accordance with Section 202.”.

479 **Sec. 8. Evaluating contractor past performance**

480 Section 403 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
481 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

482 (1) Subsection (d) is amended to read as follows:

483 “(d) Each RFP shall include a statement of work or other description of the District’s
484 specific needs, which shall be used as a basis for the evaluation of proposals.”.

485 (2) A new subsection (d-1) is added to read as follows:

486 “(d-2)(1) Each RFP shall set forth each evaluation factor and indicate the relative
487 importance of each evaluation factor. At a minimum, the following shall be included as
488 evaluation factors:

489 “(A) Price or cost to the District government;

490 “(B) The quality of the product or service as addressed by consideration of
491 one or more non-cost evaluation factors such as compliance with solicitation requirements,
492 technical capability, management capability, prior experience, and past performance of the
493 offeror; and

494 “(C) Past performance of the offeror, including a description of the
495 approach for evaluating past performance pursuant to paragraph (2).

496 “(2) In evaluating past performance, the contracting officer shall consider, at a
497 minimum:

498 “(A) The offeror’s past or current government or private sector contracts
499 for efforts similar to the District’s requirement.

500 “(B) Information obtained from the offeror, or any other source, on
501 problems encountered on the offeror’s past or current contracts including protests, legal actions,
502 and resulting corrective actions.

503 “(C) Information regarding predecessor companies, parent companies,
504 subsidiary companies, key personnel who have relevant experience, or subcontractors that will
505 perform major or critical aspects of the requirement when such information is relevant to the
506 acquisition.

507 “(D) Compliance with past or current subcontracting plan goals and other
508 provisions of the Small, Local, and Disadvantaged Business Enterprise Development and
509 Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33, § 2301, D.C. Code § 2-
510 218.01 *et seq.*)”.

511 “(3) In the case of an offeror without a record of relevant past performance or for
512 whom information on past performance is not available, the offeror may not be evaluated
513 favorably or unfavorably on past performance.”.

514 **Sec. 9. Estimate of construction costs**

515 (a) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law
516 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended by adding a new section 605 to read
517 as follows:

518 “Sec. 605. Estimate of construction costs.

519 “(a) An estimate of costs shall be prepared for each proposed contract, contract
520 modification, or a change order for a construction project anticipated to exceed \$10,000 dollars.

521 “(b) The estimate shall be prepared in detail, as though the District were competing for
522 the contract, and shall not rely solely on the comparable costs of similar construction projects.

523 “(c) The estimate shall be made available to the contracting officer for use in preparation
524 of the contract solicitation and in the determination of price reasonableness in awarding a
525 contract.

526 “(d) Access to information concerning the estimate, and the overall amount of the
527 estimate, shall be limited to District personnel or agents of the District whose official duties
528 require knowledge of the estimate and shall not be disclosed, except as otherwise permitted by
529 law.

530 (b) Within 90 days of the effective date of this act, the Mayor shall promulgate
531 regulations to conform Chapter 27-47 of the District of Columbia Municipal Regulations to the
532 requirements of the amendment under subsection (a) of this section.

533 **Sec. 10. Non-construction payment bonds**

534 Section 702 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
535 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

536 (1) the section title is amended by replacing the phrase “construction contracts”
537 with the phrase “construction contracts and non-construction service contracts”.

538 (2) a new subsection (a-1) is added to read as follows:

539 “(a-1)(1) When a non-construction contract for services is awarded in excess of
540 \$250,000, a payment bond satisfactory to the District, executed by a surety company authorized
541 to do business in the District or otherwise secured in a manner satisfactory to the District, for the
542 protection of all persons supplying services and labor to the contractor or its subcontractors for
543 the performance of the work provided for in the contract shall be delivered to the District and
544 shall become binding on the parties upon the execution of the contract.

545 “(2) The payment bond required by paragraph (1)(B) of this subsection shall be in
546 an amount equal to 35%, or the amount set aside in the contract to be spent on subcontractors,
547 whichever is greater.”.

548 (3) subsection (b) is amended to read as follows:

549 “(b) Pursuant to rules promulgated under this chapter, the CPO may reduce the amount
550 of performance and payment bonds for construction contracts to 50% of the amounts established
551 in subsection (a) of this section, and may reduce the amount of payment bonds for non-
552 construction service contracts to an amount equal to the dollar value to be performed by
553 subcontractors according to a certified business enterprise subcontracting plan filed pursuant to
554 Section 2346 of the Small, Local, and Disadvantaged Business Enterprise Development and
555 Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33, § 2301, D.C. Code § 2-
556 218.46).”.

557 (4) subsection (c) is amended by replacing the phrase “subsection (a) of this
558 section.” with the phrase “subsection (a) or subsection (a-1) of this section.” anywhere it appears.

559 (5) subsection (d)(1) is amended by replacing the phrase “construction contract”
560 with the phrase “construction contract or non-construction contract for services”.

561 **Sec. 11. Transparency in contracting.**

562 Section 1104 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
563 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended to read follows:

564 “(a) The CPO shall establish and maintain on the Internet a website containing publicly-
565 available information regarding District procurement. Any documents on the website added after
566 the effective date of the Procurement Integrity, Transparency, and Accountability Amendment
567 Act of 2015 shall be made available in machine-readable and searchable format and shall include
568 the following.

569 “(b) The website established under subsection (a) shall contain, at a minimum, the
570 following sections:

571 “(1) Information of the legal authority and rules that govern procurement for all
572 District agencies and instrumentalities, including those exempt from the authority of the CPO;

573 “(2) Links to contract solicitation websites of OCP and all district agencies
574 exempt from the authority of the CPO.

575 “(3) A database containing contracts in excess of \$100,000, including those made
576 by District agencies exempt from the authority of the CPO, which shall include, at a minimum
577 the following:

578 “(A) A copy of the executed contract;

579 “(B) Determinations and findings related to the contract;

580 “(C) Contract modifications, change orders, and amendments associated
581 with the contract;

582 “(D) Solicitation documents, including requests for proposals and
583 invitations for bids, and any amendments of such documents; and

584 “(E) Contract summary documents submitted to the Council for its
585 review.

586 “(4) A list of all contracts under \$100,000 which shall include the vendor name, a
587 description of the goods or services purchased, the amount of the contract, and the term of the
588 contract.

589 “(c) Agencies not subject to the authority of the CPO shall transmit the information
590 required by this section to the CPO for posting on the Internet.”.

591 **Sec. 12. Acquisition planning.**

592 Section 1105 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
593 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

594 (1) A new subsection (a-1) is added to read as follows:

595 “(a-1) At a minimum, each agency acquisition plan shall contain anticipated
596 procurement needs of the coming fiscal year, and four subsequent fiscal years, with specific
597 information on the following:

598 “(1) program-level needs;

599 “(2) anticipated multi-year procurements;

600 “(3) option years for contracts; and

601 “(4) expected major changes in ongoing or planned procurements.”.

602 (3) Subsection (b) is amended to read as follows:

603 “(b) Each agency shall submit a draft acquisition plan for the following fiscal year to the
604 Council no later than the date of submission of the Mayor’s proposed budget to the Council.
605 Such plan shall be finalized based on the funding levels provided for in a fiscal year budget
606 passed by the Council and an updated acquisition plan shall be submitted to the Council no later
607 than the first day of the fiscal year.”.

608 (2) A new subsection (c) is added to read as follows:

609 “(c) Not later than the date of submission of an annual proposed budget by the Mayor to
610 the Council, the Mayor shall transmit to the Council and make available to the public a
611 government-wide strategic acquisition plan that includes:

612 “(1) the guiding principles, overarching goals, and objectives of the District’s
613 acquisitions for work, goods, and services; and

614 “(2) goals and plans for utilization of strategic sourcing the agency-wide or
615 government-wide contracts pursuant to section 1107.”.

616 **Sec. 13. Strategic sourcing**

617 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
618 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

619 (1) A new paragraph 63A is added to section 104 to read as follows:

620 “(63A) “Strategic sourcing” means a structured and collaborative process of
621 critically analyzing an organization’s spending patterns to better leverage its purchasing power,
622 reduce costs, and improve overall value and performance.”.

623 (2) A new section 1107 is added to read as follows:

624 “Sec. 1107. Strategic Sourcing

625 “(a) The Mayor shall establish an annual Government-wide goal to procure goods and
626 services using strategic sourcing, in accordance with this section.

627 “(b) The Mayor shall issue regulations applicable to all agencies, except those specified
628 in Section 105, for implementing the goal established under subsection (a). The Mayor may set
629 specific goals for procurement and savings that are customized to individual agencies.

630 “(c) The regulations issued under subsection (b) shall include, at a minimum:

631 “(1) Criteria for the goods and services to be procured using strategic sourcing,
632 consistent with the considerations described in subsection (d).

633 “(2) Standards to measure progress towards meeting strategic sourcing goals.

634 “(3) Procedures to hold agencies accountable and ensure that agencies are
635 achieving their strategic sourcing goals.

636 “(4) Procedures to ensure that an agency is not making purchases that
637 significantly exceed the requirements of the agency.

638 “(d) In developing the regulations issued under this section, the Mayor shall take into
639 consideration the application of strategic sourcing in a manner that

640 “(1) is consistent with applicable laws;

641 “(2) accounts for the benefits as well as the costs of procuring goods and services;

642 “(3) emphasizes the procurement of goods and services that are procured
643 repetitively, procured Government-wide and in large amounts, and are non-technical and
644 commercial in nature; and

645 “(4) reflects the requirements of the Small, Local, and Disadvantaged Business
646 Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-
647 33, § 2301, D.C. Code § 2-218.01 *et seq.*.)”

648 **Sec. 14. Fiscal impact statement.**

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

652 **Sec. 15. Effective date.**

653 This act shall take effect following approval by the Mayor (or in the event of veto by the
654 mayor, action by the Council to override the veto), a 30-day period of Congressional review as
655 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
656 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
657 Columbia Register.