

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

A BILL
21-334

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Procurement Practices Reform Act of 2010 to allow procurement of facilities maintenance services for certain District-owned buildings, clarify the procurement authority of the Department of General Services, require additional transparency in Council contract summaries, amend requirements for the solicitation and award of privatization contracts, establish restrictions on the performance of inherently governmental functions by contractors, establish an Ombudsman for Contracting and Procurement at District agencies, allow the District to offset minor tax delinquency with reduced payments to vendors, prohibit certain contacts during source selection, establish contractor past performance as an evaluation criteria during source selection, require a government cost estimate for construction projects, require submission of project labor agreements on construction contracts, modify surety requirements for construction contracts and non-construction service contracts, clarify the scope of the Contract Appeals Board’s review of procurements with regard to business judgment, modify requirements for posting contract information on the Internet, to clarify the rulemaking authority of the CPO and DGS, to amend the Quick Payment Act of 1984 to require a change order clause in contracts, and to establish a minimum interest penalty and faster review of claims by contracting officer.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Procurement Integrity, Transparency, and Accountability Amendment Act of 2016.”

Sec. 2. Contracts for ongoing facility costs.

Section 105(c)(13) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.05(c)(13)), is to read as follows:

“(13) The procurement of services for the design, development, construction, and maintenance of a facility on real property that has been disposed of pursuant to District law or on District-owned real property adjacent to a disposed property, provided, that the construction of the

38 facility is required by the Land Disposition Agreement, or similar agreement, governing the
39 disposition of the real property;”.

40 Sec. 3. Department of General Services authority clarification

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

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

44 “(d) Except regarding agencies exempted in section 105(c) and 201(b) and roads, bridges,
45 other transportation systems, and facilities and structures appurtenant to roads, bridges, and other
46 transportation systems, the Department of General Services shall have procurement authority for:

47 “(1) Construction and related services under Title VI of this chapter; and

48 “(2) Facilities maintenance and operation services, real estate asset management
49 services, utility contracts, and security services, pursuant to section 1023(5) of the Department of
50 General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21;
51 D.C. Official Code § 10-551.02(5)).”.

52 (2) Subsection (e) is amended to read as follows:

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

57 (b) Section 1028(c) of the Department of General Services Establishment Act of 2011,
58 effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-551.07.) is amended to
59 read as follows:

60 “(c) The representative shall perform an analysis of all aspects of the proposed contract or
61 real estate transaction, including the costs and benefits, and shall negotiate on behalf of the
62 District provided, that the representative shall not bind the District or direct District government
63 employees, and the terms of the contract shall be approved by the Director and, if applicable, the
64 Council.”.”

65 Sec. 4. Council review of contracts.

66 Section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
67 (D.C. Law 18-371; D.C. Official Code § 2-352.02), is amended as follows:

68 (a) Subsection (a) is amended to read as follows:

69 “(a)(1) Pursuant to § 1-204.51, prior to the award of a multiyear contract or a contract in
70 excess of \$1 million during a 12-month period, the Mayor or executive independent agency or
71 instrumentality shall submit the proposed contract to the Council for review and approval in
72 accordance with the criteria established in this section.

73 “(2) For a contract modification to exercise an option period when the exercise of
74 the option period does not result in a material change in the terms of the underlying contract,
75 submission of the modification to exercise the option period shall constitute submission of the
76 contract pursuant to this section.”

77 (b) Subsection (c) is amended as follows:

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

80 (2) A new paragraph (1A) is added to read as follows:

81 “(1A) For a contract containing option periods, the contract amount for the base
82 period and for each option period, and if the contract amount for one or more of the option
83 periods differs from the contract amount for the base period, an explanation of the reason or
84 reasons for that difference;”.

85 (3) A new paragraph (1B) is added to read as follows:

86 “(1B) If the contract definitizes a letter contract or replaces a contract awarded
87 through an emergency procurement pursuant to section 405:

88 “(A) The date on which the letter contract or emergency awarded through
89 an emergency procurement was executed;

90 “(B) The number of times the letter contract or contract awarded through
91 an emergency procurement has been extended; and

92 “(C) The value of the goods and services provided to date under the letter
93 contract or contract awarded through an emergency procurement, including under each extension
94 of the letter contract or contract awarded through an emergency procurement.”.

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

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

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

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

104 “(3A) A description of any bid protest related to the award of the contract,
105 including whether the protest was resolved through litigation, withdrawal of the protest by the
106 protestor, or voluntary corrective action by the District. Each such description shall include the
107 identity of the protestor, the grounds alleged in the protest, and any deficiencies identified by the
108 District as a result of the protest;”.

109 (6) Paragraph (4) is amended by striking the phrase “prior performance on
110 contracts with the District government” and inserting the phrase “performance on past or current
111 government or private sector contracts with requirements similar to those of the proposed
112 contract;”.

113 (7) A new paragraph (4A) is added to read as follows:

114 “(4A) A summary of the subcontracting plan required under Section 2346 of the
115 Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,
116 effective October 20, 2005 (D.C. Law 16-33, D.C. Official Code § 2-218.46) to include a
117 certification by the District that the subcontracting plan meets the minimum requirements of the
118 Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,
119 effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*), and the

120 dollar volume of the portion of the contract to be subcontracted, expressed both in total dollars
121 and as a percentage of the total contract amount;”.

122 (8) A new paragraph (5A) is added to read as follows:

123 “(5A) The amount and date of any expenditure of funds by the District pursuant to
124 the contract prior to its submission to the Council for approval;”.

125 (9) Paragraph (8) is amended to read as follows:

126 “(8)(A) A certification that the Citywide Clean Hands database indicates that the
127 proposed contractor is current with its District taxes.

128 (B) If the Citywide Clean Hands Database indicates that the proposed
129 contractor is not current with its District taxes:

130 (i) A certification that the contractor has worked out and is current
131 with a payment schedule approved by the District; or

132 (ii) A certification that the contract will be current with its District
133 taxes after the District recovers any outstanding debt as provided under section 301(9);”.

134 (10) A new paragraph (8A) is added to read as follows:

135 “(8A) A certification from the proposed contractor that it is current with its
136 federal taxes, or has worked out and is current with a payment schedule approved by the federal
137 government.

138 (11) Paragraph (11) is amended by striking the phrase “debarment; and” and
139 inserting the phrase “debarment;” in its place.

140 (12) Paragraph (12) is amended to read as follows:

141 “(12) Where the contract, and any amendments or modifications, if executed, will
142 be made available online;”

143 (13) A new paragraphs (13) is added to read as follows:

144 “(13) Where the original solicitation, and any amendments or modifications, will
145 be made available online; and

146 (c) A new subsection (c-1) is added to read as follows:

147 “(c-1) A proposed change to the scope or amount of a contract, including the exercise of
148 an option period, a modification, a change order, or any similar changethat is submitted to the
149 Council pursuant to this section and seeks from the Council retroactive approval of an action or
150 authorization for payment, shall include the summary required under subsection (c) and also
151 shall include:

152 “(1) The period of performance associated with the proposed change, including
153 date as of which the proposed change is to be made effective;

154 “(2) The value of any work or services performed pursuant to a proposed change
155 for which the Council has not provided approval, disaggregated by each proposed change if more
156 than one proposed change has been aggregated for Council review;

157 “(3) The aggregate dollar value of the proposed change as compared with the
158 amount of the contract as awarded;

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

161 “(5) The reason why the proposed change was sent to the Council for approval
162 after it is intended to take effect;

163 “(6) The reason for the proposed change; and

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

165 (d) A new subsection (c-2) is added to read as follows:

166 “(c-2) Any proposed change submitted to the Council for its review in accordance with
167 subsection (c-1) shall be referred to the Inspector General who may examine the contract for
168 possible corruption, mismanagement, waste, fraud, or abuse pursuant to Section 208(a-1)(2) of
169 the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C.
170 Law 6-85; D.C. Official Code § 1-301.115a(a-1)(2)).”.

171 (e) A new subsection (c-3) is added to read as follows:

172 “(c-3) The proposed exercise of an option period pursuant to subsection (a)(2) may be
173 submitted electronically and shall contain a summary, including the following:

174 “(1) The proposed contractor, contract amount, contract term and contract type;

175 “(2) The identifying number of the underlying contract, including the identifiers
176 assigned to the underlying contract by the Council for the base period of the contract and any
177 subsequent option periods;

178 “(3) A statement indicating that the contracting officer determined through the
179 Citywide Clean Hands Database that the contractor is current with its District taxes or has
180 worked out and is current with a payment schedule approved by the District, or that the
181 contracting officer will offset any outstanding amount pursuant to section 301(9); and

182 “(4) A statement indicating that the proposed contract is within the appropriated
183 budget authority for the fiscal year and is consistent with the financial plan and budget adopted
184 in accordance with § 47-392.01 and 47-392.02.”

185 (f) Subsection (e) is amended by striking the phrase “contained therein.” and inserting the
186 phrase “contained therein, provided that a copy of the underlying letter contract be transmitted to
187 the Council with the definitive contract.” in its place.

188 “(3) A statement indicating that the contracting officer determined through the
189 Citywide Clean Hands Database that the contractor is current with its District taxes or has
190 worked out and is current with a payment schedule approved by the District, except as provided
191 under section 301(9); and

192 “(4) A statement indicating that the proposed contract is within the appropriated
193 budget authority for the fiscal year and is consistent with the financial plan and budget adopted
194 in accordance with § 47-392.01 and 47-392.02.”

195 (f) Subsection (e) is amended by striking the phrase “contained therein.” and inserting the
196 phrase “contained therein, provided that a copy of the underlying letter contract be transmitted to
197 the Council with the definitive contract.” In its place.

198 Sec 5. Privatization contracts.

199 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
200 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

201 (1) Section 202(c) is amended by adding a new paragraph (11A) to read as
202 follows:

203 “(11A) Any determination and findings issued in relation to the contract’s
204 formation, including any determination and findings made under section 205; and”.

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

206 “Sec. 205. Privatization contracts.

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

208 “(1) Except as provided under subsection (d), a privatization contract shall not
209 cause the displacement of District government employees including by layoff, demotion,
210 involuntary transfer to a new class, involuntary transfer to a new location requiring a change of
211 residence, or time base reductions. For purposes of this paragraph, displacement does not include
212 changes in shifts or days off, nor does it include reassignment to other positions within the same
213 class and general location.

214 “(2) The privatization contract shall provide the District with an economic
215 advantage, as demonstrated by the determination and findings issued pursuant to subsection (b).

216 “(3) The economic advantage of the privatization contract shall not be outweighed
217 by the public’s interest in having a particular function performed directly by District employees,
218 as demonstrated in the determination and findings issued pursuant to subsection (b).

219 “(4) The privatization contract shall be awarded through a publicized, competitive
220 procurement process pursuant to Title IV of this act.

221 “(5) The privatization contract shall include specific provisions establishing the
222 minimum qualifications for the employees of the contractor that will perform the work under the

223 contract and an affirmation by the contractor that the contractor’s hiring practices meet
224 applicable District standards.

225 “(b) Before issuing a solicitation for a privatization contract, the Mayor, instrumentality,
226 or independent agency shall:

227 “(1) Issue a draft determination and findings demonstrating that the cost of having
228 the contracted-for service provided by a contractor will be at least 5% less than if the service
229 were to be provided by employees of the District or its instrumentality or independent agency.

230 The draft determination and findings shall include, at a minimum, the following:

231 “(A) The estimated cost of having a contractor provide the service
232 contrasted with the costs that would be directly associated with having employees of the District
233 or its instrumentality continue performance;

234 “(B) Personal services costs attributable to having a contractor provide the
235 service contrasted with the personal services costs that would result from having employees of
236 the District or its instrumentality or independent agency continue performance, including salary
237 and fringe benefits;

238 “(C) Non-personal services costs attributable to having a contractor
239 provide the service contrasted with the non-personal services costs that would result from having
240 employees of the District or its instrumentality or independent agency continue performance,
241 including rent, equipment, and utilities;

242 “(D) Any additional costs that would be built into a privatization contract,
243 including expected costs related the administration, oversight, and supervision by District
244 government personnel of a privatization contract;

245 “(E) A description of the expected impact of a privatization contract on the
246 quality of goods or services provided to or on behalf of the District government;

247 “(F) The number of employees of the District or its instrumentality or
248 independent agency that are necessary to perform the service proposed to be the subject of a
249 privatization contract; and

250 “(G) The number of employees of the District or its instrumentality or
251 independent agency that would be displaced by the contract within the meaning of subsection
252 (a)(1).

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

255 “(3) Share the draft determination and findings with employees who could be
256 displaced within the meaning of subsection (a)(1) as a result of the privatization contract and any
257 labor unions or groups representing those employees to solicit their comments.

258 “(4) Issue a final determination and findings that incorporate the full analysis by
259 the Chief Financial Officer, and a summary of comments provided pursuant to paragraph (3) .
260 Each final determination and findings shall be made publicly available online before any
261 solicitation for a privatization contract based on the final determination and findings is issued.

262 “(c)(1) If the Mayor, instrumentality, or independent agency issues a solicitation for a
263 privatization contract that would displace employees of the District or its instrumentality or
264 independent agency, those employees or a person or entity representing those employees may
265 submit a bid or proposal to perform the services as a private entity; provided, that the employees
266 agree to resign their employment with the District or its instrumentality or independent agency
267 upon selection as the awardee of the contract.

268 “(2) The Mayor, instrumentality, or independent agency shall consider any
269 employee bid or proposal submitted pursuant to paragraph (1) on the same basis as any other bid
270 or proposal.

271 “(3) The Mayor shall make available reasonable resources to assist employees of
272 the District or its instrumentality or independent agency, or an entity representing such
273 employees in formulating a bid or proposal pursuant to paragraph (1); provided, that standards
274 for determining the resources to be made available and whether they are reasonable shall be
275 determined by rulemaking.

276 “(4) A solicitation for a privatization contract shall include information describing
277 how displaced employees of the District or its instrumentality or independent agency may
278 exercise their right to compete for the contract pursuant to this subsection.

279 “(d) If a privatization contract is awarded that causes employees of the District or its
280 instrumentality or independent agency to be displaced:

281 “(1) The contractor shall offer to each displaced employee a right of first refusal
282 to employment by the contractor, in a comparable available position for which the employee is

283 qualified, for at least a 6-month period during which the employee shall not be discharged by the
284 contractor without cause;

285 “(2) Any District employee who is displaced as a result of a privatization contract
286 and is hired by the contractor who was awarded the contract, shall be entitled to the benefits
287 provided by the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41
288 U.S.C. § 6702 *et seq.*);

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

292 “(4) The Mayor, instrumentality, or the independent agency head shall make
293 efforts to assist employees of the District or its instrumentality or independent agency who would
294 be affected by the privatization contract and to promote employment opportunities for District
295 residents with the contractor. These efforts shall include:

296 “(A) Consulting with union representatives and employees of the District
297 or its instrumentality or independent agency who would be affected by the privatization contract;

298 “(B) Providing prior notification of at least 30 days of any adverse impact
299 of a privatization contract to employees of the District or its instrumentality or independent
300 agency who would be affected by the contract, including notification to a labor organization
301 certified as the exclusive representative of employees affected by the contract;

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

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

306 “(e)(1) Any privatization contract shall incorporate specific performance standards and
307 targets including for productivity and cost savings to be achieved under the contract.

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

311 “(3) The contract may be canceled without prejudice to the District if the
312 contractor fails to comply with the performance criteria set out in the contract.

313 “(f) An agency or instrumentality shall not attempt to circumvent the requirements of this
314 section by eliminating the provision of services by its own employees before procuring
315 substantially the same services from a person who is not employed by that agency or
316 instrumentality.

317 “(g)(1) Each year the District of Columbia Auditor shall review a selection of
318 privatization contracts, which shall be chosen by the Auditor based on the dollar value and scope
319 of the contracts, their potential impact on the health and safety of District residents, their
320 potential impact on economic development and employment opportunities in the District, and
321 other factors deemed appropriate by the Auditor.

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

324 “(A) The 5% cost savings set forth in subsection (b)(1) of this section; and

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

327 “(3) The Auditor may report that the cost and performance data for the selected
328 contracts are inconclusive, but if the District has failed to collect, maintain, or provide cost or
329 performance data, the Auditor may reasonably conclude that the cost savings or performance
330 standards and targets are not being met.

331 “(4) If the Auditor finds in the report issued pursuant to paragraph (2) of this
332 subsection that a privatization contract has not met the cost savings or performance standards and
333 targets, the Mayor, or independent agency head shall review the merits of cancelling the
334 privatization contract and performing the work with District employees and shall report to the
335 Council on the results of their review.

336 “(h) The requirements of this section shall not apply to:

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

339 “(2) Services that cannot be performed satisfactorily by District government
340 employees, or are of such a highly specialized or technical nature that the necessary expert
341 knowledge, experience, and ability, are not available through District employees, as determined
342 by the Mayor.

343 “(3) Contracts for staff augmentation services to be provided pursuant to a
344 contract with a term of less than one year that does not contain options to extend the performance
345 period.

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

349 “(5) Contracts that are necessary to protect against a conflict of interest or to
350 insure independent and unbiased findings in cases in which there is a clear need for an unbiased
351 and objective outside perspective, as determined by the Mayor.

352 “(6) Contracts entered in to pursuant to section 201(c).

353 “(7) Contracts that will provide equipment, materials, facilities, or support
354 services that could not feasibly be provided by the District in the location where the services are
355 to be performed, as determined by the Mayor.

356 “(8) Contracts to provide training for which appropriately qualified District
357 employees are not available, as determined by the Mayor.

358 “(9) Contracts for services that are of such an urgent, temporary, or occasional
359 nature that the delay incumbent in their formation under this section would frustrate their very
360 purpose, as determined by the Mayor.

361 “(i) The CPO shall promulgate rules, pursuant to section 1106, with detailed procedures
362 to implement this section.

363 Sec. 6. Inherently governmental functions.

364 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
365 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

366 (a) Section 104 is amended as follows:

367 (1) A new paragraph (34B) is added to read as follows:

368 “(34B) “Function closely associated with an inherently governmental function”
369 means a function that is not an inherently governmental function, but is similar to an inherently
370 governmental function because of the nature of the function, the manner in which the contractor
371 performs the function, or the manner in which the government administers the contractor’s
372 performance of the function, as determined by application of the criteria set forth under section
373 205a.”.

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

375 “(37B) “Inherently governmental function” means a function that is so intimately
376 related to the public interest as to require performance by District government employees, as
377 determined by application of the criteria under section 205a.”.

378 (b) A new section 205a is added to read as follows:

379 “Sec. 205a. Inherently governmental functions.

380 “(a) The District shall not award a contract to provide any service that is an inherently
381 governmental function.

382 “(b) The District may enter into a contract for the performance of a function closely
383 associated with an inherently governmental function only if the head of an agency benefited by
384 the performance of the contract:

385 “(1) Finds that appropriate District government employees cannot reasonably
386 perform the function at issue;

387 “(2) Ensures that appropriate District government employees supervise contractor
388 performance of the contract and perform all inherently governmental functions associated with
389 the contract; and

390 “(3) Addresses any potential organizational conflicts of interest of the contractor
391 in the performance of the functions closely associated with an inherently governmental function
392 under the contract.

393 “(c) An inherently governmental function involves, among other things, the interpretation
394 and execution of the laws of the District to:

395 “(1) Bind the District to take or not to take some action by contract, policy,
396 regulation, authorization, order, or otherwise;

397 “(2) Appoint, direct, or control officials or employees of the District;

398 “(3) Exert ultimate control over the acquisition, use, or disposition of the
399 property, real or personal, tangible or intangible, of the District, including the control, or
400 disbursement of appropriated and other District funds.

401 “(4) With respect to contracts to procure goods or services for the District:

402 “(A) Determine what supplies or services are to be acquired by the
403 District, and at what prices; provided, that the Mayor or the Mayor’s designee, may give a
404 contractor authority to acquire supplies for the District at prices within specified ranges and
405 subject to other reasonable conditions deemed appropriate;

406 “(B) Participate as a voting member on any source selection boards, unless
407 the contractor has:

408 “(i) Been hired by the District for its specific technical expertise;
409 and

410 “(ii) No conflict of interest exists with regard to the contract or
411 vendors under consideration by the source selection board.

412 “(C) Approve any contractual documents, to include documents defining
413 requirements, incentive plans, and evaluation criteria;

414 “(D) Award contracts;

415 “(E) Administer contracts, including ordering changes in contract
416 performance or contract quantities, taking action based on evaluations of contractor performance,
417 and accepting or rejecting contractor products or services;

418 “(F) Terminate contracts;

419 “(G) Determine whether contract costs are reasonable, allocable, or
420 allowable; and

421 “(H) Evaluate a contractor’s performance when the evaluation is to be
422 used to determine whether payment should be made to the contractor and in what amount.

423 “(d) The CPO shall issue rules pursuant to Section 1106, consistent with this section and
424 containing guidance on defining an inherently governmental functions and a function closely
425 related to an inherently governmental function, and including categories of functions and specific
426 functions meeting these definitions.

427 “(e) The Mayor may waive compliance with any of the requirements of this section for
428 any contract in effect upon the effective date of the Procurement Integrity, Transparency, and

429 Accountability Amendment Act of 2016, and for any option period exercised under such
430 contract, so long as the option period was provided for in the contract as of the effective date of
431 the Procurement Integrity, Transparency, and Accountability Amendment Act of 2016.

432 “(f) Notwithstanding subsection (e), the requirements of this section shall apply to any
433 contract or option period in effect five years after the effective date of the Procurement Integrity,
434 Transparency, and Accountability Amendment Act of 2016”.

435 Sec. 7. Ombudsman for contracting and procurement

436 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
437 371; D.C. Official Code § 2-351.01 *et seq.*), is amended by adding a new section 207 to read as
438 follows:

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

440 “(a) There is established within the Office of Contracting and Procurement an Office of
441 Ombudsman for Contracting and Procurement which shall be headed by an ombudsman with
442 purview over contracts under the authority of the CPO.

443 “(b) Each District agency or instrumentality with independent procurement authority
444 pursuant to section 201 shall designate an Agency Ombudsman for Contracting and
445 Procurement.

446 “(c) Each Ombudsman designated pursuant to this section shall:

447 “(1) Serve as a vehicle for contractors and subcontractors performing work or
448 providing services under a District contract to communicate their complaints and concerns
449 regarding contracting, procurement, or a specific contract, through a single entity;

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

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

453 “(4) Generate options for a response by the agency or instrumentality and offer a
454 recommendation from among the options;

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

458 “(6) Identify systemic concerns and recommend to the CPO and the Council
459 policy changes, and strategies to improve the contracting and procurement process.”.

460 Sec. 8. Tax delinquency offset allowance.

461 Section 301 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
462 (D.C. Law 18-371; D.C. Official Code § 2-353.01), is amended as follows:

463 (a) The lead in language is redesignated as subsection (a).

464 (b) Paragraph (9) is amended by striking the phrase “delinquent status” and inserting the
465 phrase “delinquent status of more than the greater of \$1,000 or 1 percent of the contract value, up
466 to \$25,000” in its place

467 (c) A new paragraph (b) is added to read as follows:

468 “(b) If the District awards a contract to a prospective contractor that has an outstanding
469 debt with the District in a delinquent status that is in an amount less than the amount required to

470 disqualify the prospective contractor pursuant to subsection (a)(9), the District shall recoup the
471 outstanding debt by offsetting it against any payment due to the contractor under the contract.”

472 Sec. 9. Prohibited contacts during source selection

473 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
474 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

475 (1) Section 104 is amended as by adding new paragraph (51A) to read as follows:

476 “(53A) “Restricted Period” means the period of time commencing with the
477 earliest written notice, advertisement, or solicitation of a request for proposal, invitation for bids,
478 or any other method of soliciting a response from offerors or bidders intending to result in a
479 contract with a District, and ending with either the execution of the final contract and its
480 approval by the District or submission of the contract to the Council for its review when such
481 submission is required pursuant to section 451 of the District of Columbia Home Rule Act,
482 approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

483 (2) Section 401(b) is repealed.

484 (3) A new section 401a is added to read as follows:

485 “Sec. 401a. Prohibited contacts during source selection.

486 “(a) Except for members of a technical advisory group, no District employee or official
487 shall contact any contracting officer or contracting staff in an attempt to influence source
488 selection outside of the processes established in Title IV of this act.

489 “(b) Prior to the commencement of a restricted period, the CPO, or the lead contracting
490 official of an agency with procurement authority independent of the CPO, shall designate a

491 person or persons to be the designated contact for offerors or bidders on a given contract during
492 the restricted period.

493 “(c)(1) During the restricted period, no bidder or offeror shall contact any District
494 employee or official with respect to source selection during a restricted period, except as
495 provided for under subsection (d).

496 (2) For the purposes of this section, contact means any oral, written or electronic
497 communication.

498 “(d)(1) During the restricted period, an offeror or bidder may make permissible contact
499 with respect to source selection.

500 “(2) For the purposes of this section, permissible contact means that the offeror or
501 bidder shall contact only the individual designated under subsection (b) for a given contract,
502 provided, that the following contacts are exempted from this subsection and do not need to be
503 directed to the individual designated under subsection (a):

504 “(A) The submission of written proposals in response to any method for
505 soliciting a response from offerors or bidders intending to result in a contract;

506 “(B) The submission of written questions through a process set forth in a
507 solicitation, request for proposals, invitation for bids, or any other method of soliciting a
508 response from offerors or bidders intending to result in a contract, so long as the written
509 questions and responses are to be disseminated to all offerors or bidders who have expressed an
510 interest in the proposed contract;

511 “(C) Participation in any demonstration, conference, or other means of
512 exchanging information in a setting open to all potential bidders or offerors through a process set
513 forth in a solicitation, request for proposals, invitation for bids, or any other method of soliciting
514 a response from offerors or bidders intending to result in a contract;

515 “(D) Negotiation with the highest-ranking offeror or bidder regarding the
516 terms of the proposed contract; and

517 “(E) Contacts by offerors or bidders with the Contract Appeals Board or
518 any other tribunal or court of competent jurisdiction in connection with a protest, appeal, or
519 dispute before that tribunal or court.

520 “(e) A bid or offer associated with a violation of this section shall be rejected, unless the
521 CPO determines that it is in the best interest of the District not to reject the bid or offer.

522 “(f) For the purposes of this section the term “bidder” or “offeror” shall include any
523 employee, agent, consultant, or person acting on behalf of a bidder or offeror.

524 “(g) Nothing in this section shall be construed to prevent any contact or communications
525 by any offeror, bidder, or District employee or official with respect to allegations of improper
526 conduct to the Office of the Attorney General, the Office of the Inspector General, the Office of
527 the District of Columbia Auditor, the CPO, the Council of the District of Columbia, the Contract
528 Appeals Board, or any other tribunal or court of competent jurisdiction.”

529 Sec. 10. Evaluating contractor past performance

530 Section 403 of the Procurement Practices Reform Act of 2010, effective April 8, 2011

531 (D.C. Law 18-371; D.C. Official Code § 2-354.03), is amended as follows:

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

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

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

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

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

540 “(B) The quality of the product or service as addressed by one or more
541 non-cost evaluation factors; and

542 “(C) Past performance of the offeror.

543 “(2) The general approach for evaluating past performance information shall be
544 described in the RFP, but at a minimum shall include an evaluation of the offeror’s performance
545 under past or current government or private-sector contracts with requirements similar to those
546 of the proposed contract.

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

550 “(4) Notwithstanding any provision of this subsection, any review of past
551 performance shall be evaluated consistent with the criteria specified in the solicitation and such
552 criteria shall be applied consistently across all offerors.”.

553 Sec. 11. Estimate of construction costs

554 (a) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law
555 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended by adding a new section 605 to read
556 as follows:

557 “Sec. 605. Estimate of construction costs.

558 “(a) An estimate of costs shall be prepared by the contracting officer for each proposed
559 contract, contract modification, or change order to be issued in connection with a construction
560 project and anticipated to exceed \$100,000 dollars.

561 “(b) The estimate shall be prepared in detail, as though the District were competing for
562 the contract, and shall not be based solely on the estimates or actual costs of similar construction
563 projects.

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

567 “(d) Access to materials gathered or created for the estimate, and the overall amount of
568 the estimate, shall be limited to District personnel or agents of the District whose official duties
569 require knowledge regarding the estimate. These materials and the overall amount of the
570 estimate shall not be disclosed, except as otherwise permitted by law.”

571 (b) Within 90 days of the effective date of this act, the Mayor shall promulgate
572 regulations to conform Chapter 27 of the District of Columbia Municipal Regulations to the
573 requirements of subsection (a) of this section.

574 Sec. 12. Project Labor Agreements

575 The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-
576 371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

577 (1) Section 104 is amended by adding a new paragraph (38A) to read as follows:

578 “(38A) “Labor Organization” shall have the same meaning as set forth in section
579 102(15) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-48, D.C.
580 Official Code § 2-1401.02(15))”.

581 (2) A new section 606 is added to read as follows:

582 “Sec. 606. Use of project labor agreements for construction projects

583 “(a) The Mayor shall require, as part of a solicitation for a construction contract pursuant
584 to this title, that every contractor and subcontractor that will engage in the construction project
585 agree to negotiate or become a party to a project labor agreement, for that project, with one or
586 more labor organizations if:

587 “(1) Use of a project labor agreement will advance the District’s interest
588 producing labor-management stability, and ensuring compliance with laws and regulations
589 governing safety and health, equal employment opportunity, labor and employment standards,
590 and other matters;

591 “(2) The project will require multiple construction contractors and/or
592 subcontractors employing workers in multiple crafts or trades; and

593 “(3) The total cost, not including ongoing operations and maintenance, of contract
594 to the District is anticipated to be \$50 million or more.

595 “(b) A project labor agreement agreed to pursuant to subsection (a) shall:

596 “(1) Bind all contractors and subcontractors engaged in construction on the
597 construction project to comply with the project labor agreement;

598 “(2) Contain guarantees against strikes, lockouts, and similar job disruptions;

599 “(3) Set forth effective, prompt, and mutually binding procedures for resolving
600 labor disputes arising during the term of the project labor agreement;

601 “(4) Provide other mechanisms for labor-management cooperation on matters of
602 mutual interest and concern, including productivity, quality of work, safety, and health; and

603 “(5) Include any additional requirements that the CPO deems necessary to
604 promote the District’s interest.

605 “(c) The Mayor may waive the requirements of this section by issuing a determination
606 and findings, posted on the internet for at least 10 calendar days before advertising the
607 solicitation, that:

608 “(1) A project does not meet the criteria set forth in subsection (a); or

609 “(2) A project labor agreement would be contrary to the interests of the District.”.

610 Sec. 13. Payment bonds

611 Title VII of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C.
612 Law 18-371; D.C. Official Code § 2-357.01 *et seq.*), is amended as follows:

613 (1) Section 702(b) is amended to read as follows:

614 “(b) The CPO may:

615 “(1) Reduce the amount of performance and payment bonds for construction
616 contracts to 50% of the amounts established in subsection (a) of this section;

617 “(2) Substitute for a bond required by paragraph (a) of this section, a letter of
618 credit in an amount equal to at least 10% of the portion of the contract price that does not include
619 the cost of operation, maintenance, and finance, in cases in which the contractor:

620 “(A) Is a nonprofit corporation, as defined in section 2(6) of the Nonprofit
621 Corporation Act of 2010, effective July 2, 2011 (D.C. Law 18-378, D.C. Official Code 29-
622 401.02(6)), or an entity controlled, directly or indirectly, by a nonprofit corporation;

623 “(B) Had a net worth of at least \$1 million in the preceding fiscal year;

624 “(C) Is a licensed general contractor; and

625 “(D) Has done business as a construction contractor for at least 5 years.”

626 (2) A new section 702a is added to read as follows:

627 “Sec. 702a. Security in non-construction service contracts.

628 “The CPO shall issue rules pursuant to section 1106 to require performance bonds,
629 payment bonds, letters of credit, or other forms of security for non-construction service contract
630 prime contractors in cases in which such security may be effective in furthering the District’s
631 interests or such security may assist subcontractors doing business under a prime contract to
632 receive payment for goods or services.”

633 Sec. 14. Review of bid protests.

634 Section 1008 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
635 (D.C. Law 18-371; D.C. Official Code § 2-360.08(d)) is amended as follows:

636 (a) Subsection (d) is amended by striking the phrase “proceeding shall be de novo and
637 the”.

638 (b) A new subsection (d-1) is added to read as follows:

639 “(d-1) An agency’s determination of its minimum needs and its determination of best
640 method of accommodating those minimum needs are business judgments primarily within the
641 agency’s discretion. The Board may not sustain a protest on the basis of either determination
642 unless a protester demonstrates by clear and convincing evidence that the determination lacked a
643 reasonable basis.”

644 Sec. 15. Transparency in contracting.

645 Section 1104 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
646 (D.C. Law 18-371; D.C. Official Code § 2-361.04 *et seq.*), is amended to read follows:

647 “Sec. 1104. Transparency in contracting.

648 “(a) The CPO shall establish and maintain on the Internet a website containing publicly-
649 available information regarding District procurement.

650 “(b) The website established pursuant to subsection (a) shall contain, at a minimum, the
651 following:

652 “(1) Information regarding the statutes and rules that govern procurement for all
653 District agencies and instrumentalities, including those exempt from the authority of the CPO;

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

656 “(3) A database containing information regarding each contract executed by the
657 District for an amount equal to or greater than of \$100,000, including each such contract made
658 by a District agency exempt from the authority of the CPO pursuant to section 105. For each
659 contract contained in the database, the database shall include a unique identifier and at a
660 minimum, the following:

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

662 “(B) All determinations and findings related to the contract;

663 “(C) All contract modifications, change orders, or amendments associated
664 with the contract;

665 “(D) All solicitation documents for the contract, including all requests for
666 proposals and invitations for bids, and any amendments of such documents; and

667 “(E) The contract summary documents for the contract submitted to the
668 Council for its review.

669 “(4) Placeholders identifying any portions of the items set forth in paragraph (3)
670 withheld as confidential by the CPO pursuant to section 417.

671 “(5) A list of each contract executed by the District for an amount less than
672 \$100,000 which shall include, for each contract, the vendor name, a description of the goods or
673 services purchased, and the dollar amount of the contract.

674 “(6)(A) A list of each payment made by the District to a prime contractor,
675 including the date and the dollar amount of the payment. The list shall be updated not less than
676 once each week.

677 “(B) Payments not administered through the Procurement Automated
678 Support System shall be exempt from the requirement of subparagraph (A).

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

681 Sec. 16. Acquisition planning.

682 Section 1105 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
683 (D.C. Law 18-371; D.C. Official Code § 2-361.05), is amended as follows:

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

685 “(a-1) At a minimum, each agency acquisition plan shall contain anticipated procurement
686 needs of the coming fiscal year with specific information on the following:

687 “(1) Program-level needs;

688 “(2) Anticipated multi-year procurements;

689 “(3) Anticipated exercises of option period of existing contracts;

690 “(4) Expected major changes in ongoing or planned procurements; and

691 “(5)The guiding principles, overarching goals, and objectives of the agency’s
692 acquisitions of work, goods, and services; and

693 “(6) Goals and plans for utilization of strategic sourcing.”.

694 (2) Subsection (b) is amended to read as follows:

695 “(b) Each agency shall submit to the Council summary of planned contracts for the
696 upcoming fiscal year no later than the date of submission of the Mayor’s proposed budget to the

697 Council. Each summary, at a minimum, shall list each planned contract and the source of
698 funding for each contract by program code in the budget.”.

699 Sec. 17. Rulemaking clarification.

700 Section 1106(a) of the Procurement Practices Reform Act of 2010, effective April 8,
701 2011 (D.C. Law 18-371; D.C. Official Code § 2-361.06), is amended as follows:

702 (a) Paragraph (1) is amended by striking the phrase “chapter, except subchapter VI of this
703 chapter.” and inserting the phrase “chapter.” in its place.

704 (b) Paragraph (2) is amended to read as follows:

705 “(2) Notwithstanding paragraph (1), the Department of General Services, pursuant
706 to subchapter I of Chapter 5 of this title, shall issue rules to implement the provisions of
707 subchapter VI of this chapter for contracts within the authority of the Department of General
708 Services.”

709 Sec. 18. Quick payment provisions.

710 The District of Columbia Government Quick Payment Act of 1984, effective March 15,
711 1985 (D.C. Law 5-164, D.C. Official Code § 2-221.01 *et seq.*) is amended as follows:

712 (1) Section 3(d) is amended by adding a new paragraph (4) to read as follows:

713 “(4) A change order clause that:

714 “(A) Prohibits the District or a prime contractor from requiring a prime
715 contractor or a subcontractor to undertake any that is determined to be beyond the original scope
716 of the prime contractor or a subcontractors contract or subcontract, including work under a
717 District-issued change order, unless the contracting officer:

718 “(i) Agrees with the prime contractor and, if applicable, the
719 subcontractor on a price for the change order or additional work;

720 “(ii) Obtains a certification from the Chief Financial Officer that
721 there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor
722 for the additional work;

723 “(iii) Has made a written, binding commitment with the prime
724 contractor to pay for the additional work within 30 days after the prime contractor submits an
725 invoice for the additional work to the contracting officer; and

726 “(iv) Gives written notice of the funding certification to the prime
727 contractor.

728 “(B) If the District fails to pay for the additional work within 30 days after
729 the prime contractor submits an invoice for the additional work to the contracting officer, allows
730 the prime contractor or subcontractor to stop work without incurring any penalty otherwise
731 allowed for under the contract;

732 “(C) Requires a prime contractor to include in its subcontracts a clause
733 that requires the prime contractor to:

734 “(i) Within 5 business days of receipt of the notice required under
735 subparagraph (A)(iv), provide the subcontractor with notice of the approved amount to be paid to
736 the subcontractor based on the portion of the additional work to be completed by the
737 subcontractor;

738 “(ii) Pay the subcontractor any undisputed amount to which the
739 subcontractor is entitled for any additional work within 10 days of receipt of payment for the
740 additional work from the District; and

741 “(iii) If the prime contractor withholds payment from a
742 subcontractor, notify the subcontractor in writing and state the reason why payment is being
743 withheld and provide a copy of the notice to the contracting officer; and

744 “(D) Prohibits the District, a prime contractor, or a subcontractor from
745 declaring another party to the contract in default or assessing, claiming, or pursuing damages for
746 delays in the completion of the construction due to the inability of the parties to agree on a price
747 for the change order or additional work.”.

748 (2) Section 4(b)(1) is amended by striking the phrase “shall pay an interest
749 penalty” and inserting the phrase “shall pay an interest penalty of at least 1.5%” in its place.

750 (3) Section 5(a)(2) is amended by striking the phrase “60 days” and inserting the
751 phrase “30 days” in its place.

752 Sec. 19. Applicability

753 (a) The portions of this act specified in subsection (b) shall apply upon the inclusion of its
754 fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer
755 to the Budget Director of the Council in a certification.

756 (b)(1) In Section 5, Section 205(c)(3) of the Procurement Practices Reform Act of 2010,
757 as amended by this act.

758 (2) Section 7;

- 759 (3) Section 12;
760 (4) Section 18(1); and
761 (5) Section 18(2).

762 Sec. 20. Fiscal impact statement.

763 The Council adopts the fiscal impact statement in the committee report as the fiscal
764 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
765 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

766 Sec. 21. Effective date.

767 This act shall take effect following approval by the Mayor (or in the event of veto by the
768 mayor, action by the Council to override the veto), a 30-day period of Congressional review as
769 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
770 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
771 Columbia Register.