

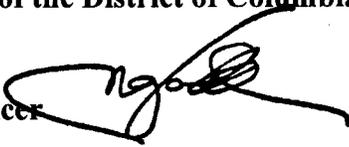
**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: March 22, 2010

SUBJECT: Fiscal Impact Statement – “Procurement Reform Act of 2010”

REFERENCE: Bill 18-635

Conclusion

Funds are not sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation will cost approximately \$448,000 in FY 2011 (its intended first year of implementation) and approximately \$753,000 in the four-year financial plan period.

Background

The proposed legislation would repeal the existing procurement law¹ and replace it with a new procurement law. A majority of the proposed provisions are the same or revised versions of the current provisions and a small portion are new provisions. Specifically, the proposed legislation would make the following changes to the current procurement practices of the Office of Contracting and Procurement (OCP):

- Exempt the D.C. Department of Transportation (DDOT), the Office of Public Education Facilities Modernization (OPEFM), and the Department of Real Estate Services (DRES) from the proposed legislation.
- Eliminate the exemption of the Public Service Commission (PSC), District of Columbia Housing Authority (DCHA), Child and Family Services Agency (CFSA), Criminal Justice Coordinating Council (CJCC), and the Department of Mental Health (DMH).

¹ “District of Columbia Procurement Practices Act of 1985”, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and “Excellence in Local Business Contract Grading Act of 2008, “effective February 5, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.04 *et seq.*)

- Eliminate the conforming amendment to Chapter 38 of the Official D.C. code, which names the Chancellor of the D.C. Public Schools (DCPS) as its chief procurement officer.
- Authorize the Chief Procurement Officer (CPO) to create a Procurement Training Institute to conduct procurement education and training programs, and develop or collaborate with established training programs to provide certifications of proficiency.
- Modify the District's process for requesting and evaluating competitive sealed proposals by giving OCP the authority to request qualifications from prospective offerors before soliciting competitive sealed proposals.
- Exempt certain contracts from the competitive requirements. The items and services identified are provided by a limited number of qualified providers; provided by very specialized groups; and/or often procured on an emergency basis (*e.g.*, legal services) and therefore cannot follow the timeline for the competitive bidding process.
- Establish seven new project delivery methods for procurements related to infrastructure facilities and services² and create a new qualification-based selection process for architecture and engineering service contracts.
- Modify bid security bond requirements for construction contracts over \$500,000 solicited through the competitive sealed bidding and competitive sealed proposal.
- Allow the CPO to transfer surplus District goods to tax-exempt organizations, District agencies, or state, county, or municipal jurisdictions.
- Authorize a contracting officer to pay a stipend to cover a portion of bid or proposal development costs to an unsuccessful offeror that submits a responsive proposal to a solicitation.

Financial Plan Impact

Funds are not sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation will cost approximately \$448,000 in FY 2011 (its intended first year of implementation) and approximately \$753,000 in the FY 2011 through FY 2014 financial plan period.

The proposed legislation would consolidate the procurement and contracting functions of four agencies that currently conduct their own procurement and contracting activities at OCP (See Table 1). As a result of this consolidation upon enactment of the proposed legislation, all funding and FTEs budgeted for procurement functions in these agencies could be expected to move to OCP, to the extent that such funding and personnel transfers are allowable by law. A Mayoral delegation of procurement authority can allow these agencies to continue their current procurement procedures and activities, but OCFO's discussions with the OCP revealed that no plans exist for these four agencies to continue to manage their procurement functions internally.

² The seven project delivery methods include architecture and engineering services, construction management at risk, design-bid-build, design-build, design-build-finance-operate-maintain, design-build-operate-maintain, and operations and maintenance.

Table 1 -- Background on the agencies to come under the OCP umbrella

	FTEs who perform procurement function	Are FTEs devoted exclusively to procurement?	Salaries plus benefit allocated to procurement	Details
<u>Included in the Analysis</u>				
Child and Family Services Administration	12	Yes	\$946,623	Locally Funded positions
Department of Mental Health	9	Yes	\$1,053,000	Budgeted in FY 10 for 10 FTEs
Criminal Justice Coordinating Council	2	No	NA	No specific funding dedicated to procurement
District of Columbia Public Service Commission	1.4	No	\$211,000	Funded by Public Service Commission Fund - Dedicated Tax. <i>Authority to Charge Fee: § 34-912</i> <i>Authority to Dedicate: § 34-912</i>
<u>Excluded from the Analysis</u>				
District of Columbia Public Schools	19	Yes	\$1,847,000	The EOM indicated that there is no intent to move procurement activities to OCP
District of Columbia Housing Authority	Excluded, elimination of exemption is a drafting mistake.			

The proposed legislation also removes the parts of D.C. Code that exempt the DCHA and DCPS from OCP procedures. The OCP indicated that the removal of DCHA's exemption is a drafting mistake and will be corrected in the Committee Print. The OCP and the Executive Office of the Mayor also informed the OCFO that DCPS is expected to receive a Mayoral delegation of procurement authority and that no plans exist to move procurement functions out of DCPS. While this fiscal impact analysis excludes DCPS, it is important to point out that removal of DCPS's exemptions makes the D.C. Official Code ambiguous, since elsewhere the code attributes procurement authority to the Chancellor. Second, should procurement functions ever move out of DCPS, funding cannot follow these functions since procurement activities at DCPS are funded by Uniform per Pupil Funding Formula Funds, which can only be received by Local Education Agencies (*i.e.*, DCPS and public charter schools).

Across the four agencies that are the subject of this analysis, at present 23.4 FTEs are exclusively engaged in procurement activities but funding for only 21 can be transferred to OCP. At the PSC, 1.4 FTEs are assigned to procurement (and these FTEs also carry other duties). Yet, the \$211,000 allocated to these positions is funded by tax collections specifically dedicated to PSC, and therefore cannot be diverted to OCP. The Criminal Justice Coordinating Council's budget does not specifically dedicate funds to procurement functions; two FTEs carry procurement

activities among other duties and the agency absorbs procurement costs through these FTEs' salaries. Funding for 21 FTEs are fully dedicated to procurement activities at CFSA and DMH combined, and these funds (approximately \$2.2 million) can follow these FTEs to OCP. OCP informed the OCFO that it intends to transfer all these FTEs upon enactment of the proposed legislation.

Table 2 – Fiscal Impact of Procurement Reform Act of 2010

	FY 2011	FY 2012	FY 2013	FY 2014	Total
Total Number FTEs currently serving	23.4				
Total Number FTEs that can be transferred	21				
Local fund Transfer to OCP	\$2,210,623	\$2,254,835	\$2,299,932	\$2,345,931	\$9,111,321
<u>Turnover due to involuntary separations</u>					
Turnover rate ^a	40%				
Severance ^b	\$199,962				
UI ^c	\$33,600				
Costs of Turnover/Separations	\$233,562	0	0	0	\$233,562
<u>Staffing</u>					
Difference between current FTE and transferrable FTEs	2				
Replacing new hires	9				
Total new hires	11				
Cost of new staffing ^d	\$1,045,000	\$1,065,900	\$1,087,218	\$1,108,962	\$4,307,080
Cost of retained staffing	\$1,263,213	\$1,288,477	\$1,314,247	\$1,340,532	\$5,206,469
Total Staffing Costs	\$2,308,213	\$2,354,377	\$2,401,465	\$2,449,494	\$9,513,550
<u>Equipment^e</u>	\$117,000				
Total Costs	\$2,658,775	\$2,354,377	\$2,401,465	\$2,449,494	\$9,864,112
NET FISCAL IMPACT	(\$448,152)	(\$99,542)	(\$101,533)	(\$103,563)	(\$752,791)

TABLE NOTES

^a Past turnover rates in agency restructurings or transfers have varied between 13 percent and 68 percent. These include WCCA (2006) with 68 percent, EDRC (Accounting and Budget Department, 2004) with 45 percent, OCFO (Central, 2003) with 59 percent and OPRS (U.S. Treasury Office, 2005) with 13 percent.

^b Severance payment is up to 13 weeks per DC Regulations. Severance includes fringe benefits for labor contracts, and may include fringe benefits for other contracts, subject to executive approval.

^c 13 weeks of unemployment at \$300 per week. The maximum is \$359 per week for 26 weeks. We used the lower number, since it is more representative of the DC government employee data from FY 2009 and FY 2010.

^d New hires assumed at Grade level 13-5 at approximately \$95,000. Current average salary among the transferred employees is \$105,000. The cost of living adjustments and step increases are expected to increase staffing costs by 2 percent annually.

^e Equipment estimated at \$5,000 per employee to cover the costs of computers, printers and other essentials. No funding is included for space.

The fiscal impact analysis takes into consideration that upon consolidation, some staff turnover (through involuntary separations) could take place. The experience across DC agencies that went through similar consolidations and restructurings shows that this turnover rate can vary anywhere from 13 percent to 68 percent. Given these trends, while consolidating the procurement activities of these four agencies at OCP, the OCP would be expected to hire 2 new employees to cover the procurement functions of CJCC and PSC (for whom no funding could be received), replace 9 of

the incoming procurement professionals (approximately 40 percent turnover rate) for a total of 11 new employees, and retain 12 of the transferred employees. Additionally, OCP will be required to purchase equipment and furniture such as chairs and desks for these new transfers and hires. As a result, in its first year of implementation, the proposed legislation could result in approximately \$224,000 in costs related to staff turnover (severance and unemployment benefits), and \$117,000 in equipment costs. Additionally, assuming that the new 11 procurement officers are hired at grade level 13-5 (at a rate that is below the average salary of the transferred employees, but similar to OCP's current procurement analysts), OCP is expected to spend approximately \$1.0 million on the newly hired staff, and \$1.3 million on the retained staff. The total cost of staffing, equipment and turnover related activities is \$2.66 million or approximately \$448,000 more than the \$2.21 million that will be transferred into OCP.

During the following years, OCP will be required to spend \$2.4 million annually on its new staff (new hires and transfers combined)—about \$100,000 above the funds it would be allowed to transfer in.

No other sections of the proposed legislation would result in a fiscal impact. The Agency Fiscal Officers for the three agencies that are now exempt from OCP's procurement procedures (DDOT, OPEFM, and DRES) indicated that the agencies can absorb any costs associated with their new responsibilities. The Procurement Training Institute is not a mandate, and therefore its implementation must be done within existing resources, or must await the necessary appropriations.

Finally, exempting certain contracts from competitive requirements might have longer-term financial implications that are unknown at this time. According to OCP, those goods and services fall into three categories: services that are unique, and therefore often do not have substitutes (*e.g.*, art work, printed media); services provided by a small group of specialized providers (*e.g.*, specialized training, legal services); and services that must be quickly provided because of court intervention or other emergency situations. Given these circumstances, the elimination of competitive bidding is unlikely to increase the costs of procuring these goods and services. However, should market conditions change, elimination of competitive bidding could increase the cost of these goods and services to the District government. It is not possible to estimate the fiscal impact of such changes at this time.

Regardless of the contracting process, all contracts must be implemented within existing resources. To the extent that the contracting process changes the total cost of the contract or the transaction costs associated with closing these contracts, these changes must be absorbed through available agency resources. Anti-deficiency laws³ prohibit District officers and employees from exceeding agency appropriations in any fiscal year.

³ 31 USCA § 1341 (2000) and D.C. Official Code § 47-355.01 *et seq.* (2003).