

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:** October 29, 2010

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

**REFERENCE:** Bill Number 18-610, Committee Print Shared with OCFO on October 27, 2010

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**Conclusion**

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation will cost approximately \$266,807 in FY 2011 and approximately \$1,127,818 over the FY 2011 through FY 2014 budget and financial plan period.

Implementation of the proposed legislation is subject to the inclusion of its fiscal effect in an approved budget and financial plan.

**Background**

The proposed legislation would repeal most of the existing Procurement Practices Act (PPA)<sup>1</sup> 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. This background summary provides an overview of the changes in the proposed legislation that could have a fiscal impact:

**TITLE II – PROCUREMENT ORGANIZATION**

- Continues the exempted status for the Council; the District of Columbia Housing Finance Agency; the District of Columbia courts, the District Public Defender Services; the Advisory

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<sup>1</sup> “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.*)

Neighborhood Commissions, DC Water; the Office of Public Education Facilities Modernization; the Washington Convention and Sports Authority; and the Office of the District of Columbia Auditor.

- Allows specific agencies to continue to exercise their administrative procurement duties while following the procurement standards and rules established by OCP until October 1, 2013. These agencies include: the Public Service Commission (PSC); the Office of the People's Counsel; the Commission on Judicial Disabilities and Tenure; the Criminal Justice Coordinating Council (CJCC); and the Police and Firefighters' Retirement and Relief Board.
- Allows specific agencies to continue to exercise their administrative procurement duties while following the procurement standards and rules established by OCP until October 1, 2016. These agencies include: the Department of Mental Health (DMH) and the Department on Disability Services (DDS).
- Continues the Child and Family Services Agency (CFSA) exemption status until it is no longer operating under a court order that requires the agency to be exempt from the CPO's authority.
- Allows the Office of the Chief Financial Officer, the University of the District of Columbia, the District of Columbia Housing Authority; the District of Columbia Public Library; the District of Columbia Retirement Board; and CFSA to exercise their administrative procurement duties within the standards and rules established by OCP.
- Allows the Department of Real Estate Services to exercise its procurement authority for construction and related services within the standards and rules established by OCP.
- Eliminates 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.
- Requires the Chief Procurement Officer for the District (CPO) to create and administer a procurement training institute (Institute) to conduct procurement education and training programs, and develop or collaborate with established training programs to provide certifications of proficiency. The CPO may charge and collect a fee for training conducted by the Institute.
- Sets training standards and certification levels for all OCP employees involved in making purchases on behalf of the District. A District employee would be required to meet procurement training requirements established by OCP prior to making any purchase on behalf of the District.

#### TITLE IV – SOURCE SELECTION AND CONTRACT FORMATION

- Exempts 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.*, postage, Metro farecards, advertising, or registration fees for conferences) and therefore cannot follow the timeline for the competitive bidding process. Notice of Intent to enter into a Sole Source Contract would be made available on the internet at least 10 days prior to award.

#### TITLE XI – MISCELLANEOUS PROVISION

- Establishes green procurement requirements and standards for the purchase of goods and services greater than \$100,000.
- Establishes the District of Columbia Supply Schedule, Purchase Card, and Training Fund that would be used to pay the costs associated with operating and maintaining the DC Supply Schedule, the Purchase Card Program, cooperative purchasing agreements, and the Institute, in addition to any other revenue, rebate, or fee generated by any program administered by OCP.

**Financial Plan Impact**

Funds are not sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation will cost approximately \$266,807 in FY 2011 and approximately \$1,127,818 over the FY 2011 through FY 2014 budget and financial plan period.

Implementation of the proposed legislation is subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Some provisions of the proposed legislation would become effective outside the financial plan period and would impose additional costs at that time. Transferring procurement staff from DDS and DMH to OCP would cost an additional \$306,747 starting in FY 2016, and transferring CFSA staff would cost an additional \$171,033 once this agency is no longer operating under court oversight.

**PROCUREMENT RE-ORGANIZATION**

Title II of the proposed legislation would consolidate the procurement and contracting functions of five agencies that currently conduct their own procurement and contracting functions: The CJCC and PSC in FY 2014; DDS and DMH in FY 2016; and CFSA at a time to be determined by court order (see Table 1). As a result of this consolidation, 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. Across the five agencies that are the subject of this analysis, 31.4 FTEs are engaged in procurement activities but funding for only 29 can be transferred to OCP.

**Table 1 – Agencies to Move Under the OCP Umbrella**

	Year Moved to OCP	FTEs performing procurement function	FTEs devoted exclusively to procurement?
Criminal Justice Coordinating Council	FY 2014	2	No
Public Service Commission	FY 2014	0.4	No
Department of Disability Services	FY 2016	8	Yes
Department of Mental Health	FY 2016 <sup>a</sup>	9	Yes
Child and Family Services Agency	Unknown <sup>b</sup>	12	Yes

**NOTES**

<sup>a</sup> DMH’s procurement functions are expected to move under OCP in FY 2016 but may be delayed until DMH is no longer operating under court oversight.

<sup>b</sup> The timing of CFSA’s procurement functions moving under OCP is unknown at this time. CFSA is currently operating under court oversight. Until this court order is lifted, CFSA will continue their purchasing and procurement functions independent of OCP.

In FY 2014 when the procurement function of CJCC and PCS are transferred to OCP, OCP would be expected to hire 2 new employees because no funding for these positions can be transferred. At PSC, 0.4 FTEs are assigned to procurement and also carry other duties. Yet, funding allocated to this position is funded by tax collections specifically dedicated to PSC and therefore cannot be diverted to OCP. The CJCC 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. This would result in approximately \$228,000 in costs related to

hiring two new staff members at grade level 13-5<sup>2</sup> and \$10,000 in equipment<sup>3</sup> for a total cost of \$238,000 in FY 2014.

When DMH and DDS procurement functions are transferred to OCP in FY 2016 (outside of the financial plan period) and whenever CFSA is no longer operating under court oversight, the analysis assumes that all 29 FTEs and funding can be transferred to OCP. As a result, some staff turnover (through involuntary separations) could take place. Given trends in turnover,<sup>4</sup> OCP would be expected to replace 7 of the incoming procurement professionals in FY 2016 and replace 5 when CFSA is no longer under court oversight, for a total of 12 new employees. OCP would be expected to retain 10 of the transferred employees from DDS and DMH and 7 of the transferred employees from CFSA for a total of 17 transferred employees. Finally, OCP will be required to purchase equipment and furniture for all transfers and hires.

Funding for these 29 FTEs from DMH, DDS, and CFSA combined are fully dedicated to procurement activities, and these funds (approximately \$2.73 million) can follow these FTEs to OCP. If DMH, DDS, and CFSA procurement functions are transferred in FY 2016, then OCP would be expected to spend approximately \$1.14 million on 12 newly hired procurement analysts, \$1.59 million on the retained staff, and \$145,000 on equipment. The total cost of staffing, equipment, and turnover related activities is \$3.20 million which is approximately \$478,000 more than the \$2.72 million that will be transferred into OCP.

OCP and the Executive Office of the Mayor 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. 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. Should procurement functions ever move out of DCPS, funding cannot follow these functions since procurement activities at DCPS are funded by Uniform Per Student Funding Formula Funds, which can only be received by Local Education Agencies (*i.e.*, DCPS and public charter schools).

#### THE PROCUREMENT TRAINING INSTITUTE

The proposed legislation establishes the Institute as an entity within OCP that will administer a procurement training program to facilitate a system of training, continuing education, and certification for contracting personnel. Based on discussions with OCP, they will partner with the University of the District of Columbia (UDC) to assist with the curriculum development and actual course offerings at UDC. OCP would require one additional FTE to be the Chief Learning Officer (CLO) to implement the Institute, develop its curriculum, training opportunities, and conduct procurement advocacy programs that include OCP.

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<sup>2</sup> This rate is below the average salary of the transferred employees, but similar to OCP's current procurement analysts.

<sup>3</sup> Equipment is estimated to cost \$5,000 per employee. This would cover the costs of computers, printers, desks, and other essentials. No funding is included for space.

<sup>4</sup> 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. 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. The OCFO's analysis assumes a 40% turnover rate.

The OCFO was not able to estimate the cost of establishing and operating the Institute because OCP has not provided detailed plans about the structure and goals of the Institute. Any fees charged for training conducted by the Institute will go into the District of Columbia Supply Schedule, Purchase Card, and Training Fund, a nonlapsing, special purpose fund that would be used to pay the costs associated with operating the Institute. No additional funds have been allocated to the Institute and the Institute would be expected to operate within available resources.

#### EMPLOYEE CERTIFICATION

The proposed legislation requires all contracting personnel to be certified. There are currently 41 uncertified contracting personnel employed by OCP. Based on nationally recognized certification requirements,<sup>5</sup> these contracting personnel would be required to attend four courses prior to taking the certification test. In FY 2011, it would cost \$2,730 per person for a total of approximately \$112,000 to certify all 41 employees.

#### GREEN PROCUREMENT

The green procurement requirements would establish environmental standards for the purchase of goods and services greater than \$100,000. The OCFO estimates that the environmental purchasing mandate would require one additional FTE to help alleviate the burden of fulfilling the new green procurement requirements. OCP and District agencies can eliminate the need for preparing Environmental Certification if purchasing goods and services from prequalified environmentally friendly lists or require in solicitations that vendors provide environmentally friendly goods and services.

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.

The following table outlines the net fiscal impact estimates for the proposed legislation:

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<sup>5</sup> The Certified Professional Public Buyer certification program administered by the Universal Public Procurement Certification Council. This is the preferred certification program for OCP and the National Institute of Government Purchasing.

**Table 2 – Estimated Fiscal Impact of  
 "Procurement Practices Reform Amendment Act of 2010"**

	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>4 Year Total</b>
Move CJCC and PCS Procurement under OCP <sup>a</sup>	\$0	\$0	\$0	\$238,000	\$238,000
1 FTE for Training Institute Implementation <sup>b</sup>	\$83,891	\$111,990	\$112,127	\$112,264	\$420,272
Certification for OCP Employees <sup>c</sup>	\$111,930	\$0	\$0	\$0	\$111,930
1 FTE for Environmental Procurement <sup>d</sup>	\$70,985	\$94,761	\$94,877	\$94,993	\$355,616
<b>Total Fiscal Impact</b>	<b>\$266,807</b>	<b>\$206,752</b>	<b>\$207,003</b>	<b>\$445,257</b>	<b>\$1,125,818</b>

NOTES

- a. OCP would be expected to hire 2 new employees because no funding for these positions can be transferred. The 2 FTEs would be hired at CS 13-5 and would need \$10,000 in equipment.
- b. One FTE would be hired as a Chief Learning Officer at CS 14-5 starting on January 1, 2011.
- c. A total of 41 contracting personnel would attend 4 courses and take the certification test at a cost of \$2,730 per employee.
- d. One additional FTE would be hired at CS 13-5 to manage the environmental purchasing mandate starting on January 1, 2011.

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 laws<sup>6</sup> prohibit District officers and employees from exceeding agency appropriations in any fiscal year.

<sup>6</sup> 31 USCA § 1341 (2000) and D.C. Official Code § 47-355.01 *et seq.* (2003).