

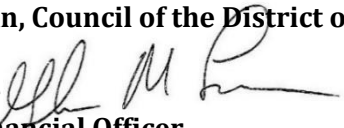
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee 
Chief Financial Officer

DATE: July 1, 2025

SUBJECT: Fiscal Impact Statement – Procurement Reform Amendment Act of 2025

REFERENCE: Draft Bill as provided to the Office of Revenue Analysis on June 13, 2025

Conclusion

Funds are sufficient in the proposed revised fiscal year 2025 budget and proposed fiscal year 2026 through fiscal year 2029 budget and financial plan to implement the bill. The Office of Contracting and Procurement (OCP) can implement the bill with current resources.

Background

The District of Columbia OCP, under the direction of the Chief Procurement Officer (CPO),¹ was established by District law in 1997² and provides contracting services for selected agencies and offices in the District. In 2007, the United States Government Accounting Office (GAO) published GAO-07-159³, a report that examined the District's procurement system with a series of recommendations that became the basis for the Procurement Practices Reform Act of 2010 (PPRA),

¹ The title of the head of the Office of Contracting and Procurement was changed from Director to CPO pursuant to the Procurement Reform Amendment Act of 1998, effective May 8, 1998 (D.C. Law 12-104: D.C. Official Code § 1-1181.1 et seq.).

² Procurement Reform Amendment Act of 1996, effective April 15, 1997 (D.C. Law 11-259: D.C. Official Code § 1-1181.1 et seq.).

³ U.S. Gov't Accountability Off., GAO-07-159,) District of Columbia: Procurement System Needs Major Reform (2007), available at: <https://www.gao.gov/products/gao-07-159> (last retrieved July 1, 2025).

The Honorable Phil Mendelson

FIS: "Procurement Reform Amendment Act of 2025", Draft Bill as provided to the Office of Revenue Analysis on June 13, 2025

which was a comprehensive update to the existing law established in 1986.⁴ This bill amends the PPRA as outlined below.

SUBCHAPTER I. GENERAL PROVISIONS

The legislation adds definitions of "certified business enterprise" and "certified joint venture" to align with the Small and Certified Business Enterprise Development and Assistance Act of 2005⁵ and amends the definition of "public notice" to remove the requirement that advertisement for competitive sealed bids and proposals for more than \$250,000 must be in newspapers of general circulation and in trade publications. "Public notice" would constitute delivery of information to interested parties via reasonably available methods.⁶

SUBCHAPTER II. PROCUREMENT ORGANIZATION

The delegation of authority by the CPO to subordinates is explicitly permitted. The bill also sanctions the usage of source selection methods not outlined in D.C. Official Code § 2-354.01 to acquire goods and services if written justification by the CPO is provided.

The PPRA specifies that approval of the base period of a contract does not constitute Council approval of option periods (D.C. Official Code § 2-352.02(b)(3)). The bill modifies this language by removing the requirement of submission of the modification to exercise the option period for contracts that are exercising the option period. Further, it removes:

- the expiration of Council approval of contracts submitted in excess of \$1 million during a 12-month period after the 12-month period has passed;
- the stipulation that Council approval of a contract to extend or amend beyond 12-months does not constitute automatic approval of those options; and
- the stipulation that the Mayor resubmit, inclusive of specified criteria⁷, the option contract to Council.

Instead, the bill permits the submission of contracts⁸ and contract modifications during periods of Council recess. The bill exempts from Council approval requirements contracts that are less than or equal to \$1 million, but via exercise of a contract modification, would total greater than \$1 million—specifying such contracts are not considered a "retroactive contract." If the Council approves a contract that contains an option period with a duration of one year or less, and there is no material change to the original contract, then that is considered approval of exercise of the option period and

⁴ District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85: D.C. Official Code § 1-1181.1 et seq.).

⁵ The Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02(1D) et seq.).

⁶ Reasonably available methods may include newspapers, electronic or paper mailing lists, trade publications, and websites designated by the District.

⁷ Specified criteria includes items like information on the proposed contractor, contract amount, method of compensation, contract term and type, source selection method; if containing an option period, inclusive of those details; any information on if the contract was awarded through an emergency procurement; etc.

⁸ The contract must be approved pursuant to D.C. Official Code § 1-204.51, which covers special rules regarding certain contracts.

the contract by the Council. The bill also specifies that review and approval of District Supply Schedule contracts, locally funded construction and transportation contracts, and capially funded vehicle purchases through an annual program are considered independently and individually reviewed and approved by the Council.

SUBCHAPTER IV. SOURCE SELECTION AND CONTRACT FORMATION

The bill clarifies the period of performance for, and the use of option periods in contracts to, procure goods or services by the CPO under federal schedule.⁹ It increases the limit for non-competitive procurements from \$10,000 to \$25,000. Further, the CPO is authorized to set aside certain contracts for architectural and engineering services to qualified certified business enterprises and certified joint ventures.

The bill would no longer subject all contracts exceeding \$100,000 to the competitive sealed bidding process. It authorizes contracting officers to appoint technical evaluation panels and delineate the manner in which they are utilized by contracting officers in evaluating proposals. Further, it exempts covered proposals¹⁰, from the District of Columbia Freedom of Information Act (FOIA).

SUBCHAPTER VI. PROCUREMENT OF CONSTRUCTION PROJECTS AND RELATED SERVICES

This bill creates a new section that allows contracting officers to establish a retainage rate for construction contracts that utilize progress payments. If the contracting officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, payment may be made in full. If satisfactory progress has not been made, the contracting officer may retain up to 10% of the progress payment until progress is achieved. When work is substantially complete, the contracting officer may retain (from previously withheld funds and future progress payments) the amount the contracting officer considers adequate for District protection. Acceptance of finished separately delineated items in a contract allows for payment of each distinct work upon completion.

The bill repeals existing law¹¹ that outlines the retention requirements for contracts for construction work and requires a retention of 10%, unless otherwise provided.

SUBCHAPTER IX. PROHIBITED ACTIONS AND REMEDIES

The bill amends the review process of suspension and debarment decisions. Under current law, a written decision by the CPO is deemed final and conclusive, unless fraudulent, or unless the debarred or suspended person appeals to the Contract Appeals Board (CAB) within 60 days of receipt of the CPO's decision. This legislation would clarify that review of the appeal—still within 60 days—by the CAB is limited to the administrative record upon which the CPO's final decision was based and cannot

⁹ General Services Administration schedule under 40 U.S.C. §§ 502(a)(3) and 602(c).

¹⁰ The bill defines a "covered proposal" as those documents "submitted by an offeror in response to the requirements of a solicitation, including requests for proposals, requests for qualifications, and requests for expressions of interest, but excluding responses to invitations for bids."

¹¹ An Act Regulating the retent on contracts with the District of Columbia, approved Mar. 31, 1906 (34 Stat. 94; D.C. Official Code § 2-203.01 et. seq.).

set aside the CPO's decision or reduce the term of a debarment unless the CAB finds that the CPO's decision was arbitrary, capricious, an abuse of discretion and the like.

The bill establishes a three-year time frame within which a claim arising under or relating to a government contract may be made by a contractor. It also prohibits the District from entering into contracts that include certain improper terms¹² and automatically voids any contract, from the beginning, if any of these conditions are contained.

SUBCHAPTER X. CONTRACT APPEALS BOARD

The bill requires that appeals to the CAB by a contractor may be made after either the date of receipt of a decision by the contracting officer, or the date when a claim has been deemed denied.

The bill amends procedures for performance under a protested procurement to remove a requirement that the CPO's written determination must be "supported by substantial evidence." However, the determination must still provide that urgent and compelling circumstances that significantly affect the interests of the District will not permit waiting for the decision of the CAB concerning the protest.

The bill also amends the First Source Employment Agreement Act of 1984 (First Source Act) to remove evaluation by the Mayor of proposals submitted on specified criteria¹³ and conforms the debarment process under the First Source Act with the debarment process under the PPRA; and amends the Small and Certified Business Enterprise Development and Assistance Act of 2005⁵ to authorize contracting officers to designate when subcontracting plans are due; to permit contracting officers to negotiate the terms of subcontracting plans with vendors; and to prevent a beneficiary from reducing the subcontracting percentage set forth in its subcontracting plan after contract award, except with the consent of the Director of the Department of Small and Local Business Development.

¹² That is, requires the District to defend, indemnify, or hold harmless a contractor or other person; be bound by any term or condition that is unknown at the time of signing such contract, or which may be unilaterally changed by the contractor; pay associated litigation expenses in the event of a dispute; provides a venue for dispute other than the CAB or the District courts; is subject to laws other than those of the District; has binding arbitration; and has an automatic renewal that would obligate funds in future years.

¹³ Specified criteria includes descriptions of the health and retirement benefits provided to employees any of the offeror's past 3 completed projects; a description of the offeror's efforts to provide District residents with ongoing employment and training opportunities; and disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494; 40 U.S.C. § 3141 et seq.) where applicable, on projects or contracts completed within the last 2 years.

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Financial Plan Impact

Funds are sufficient in the proposed revised fiscal year 2025 budget and proposed fiscal year 2026 through fiscal year 2029 budget and financial plan to implement the bill. The OCP can implement the bill with current resources. Several of the bill's provisions may reduce costs at the OCP, but the agency has not provided sufficient information to quantify those costs and no savings have been incorporated into the budget and financial plan at this time.