

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CONTRACTING AND PROCUREMENT



PUBLIC HEARING ON

B23-0471, the “Independent Compliance Office Establishment Act of 2019”

Testimony of
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Before the
Committee on Facilities and Procurement
The Honorable Robert C. White, Jr., Chairperson
and
Committee on Labor and Workforce Development
The Honorable Elissa Silverman, Chairperson
Council of the District of Columbia

John A. Wilson Building
Room 123
1350 Pennsylvania Avenue, NW
Washington, DC 20004
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Good morning, Chairperson White, Chairperson Silverman, members, and staff of the Committee on Facilities and Procurement and the Committee on Labor and Workforce Development. I am George Schutter, the Chief Procurement Officer of the District of Columbia and Director of the Office of Contracting and Procurement. Thank you for the opportunity to offer testimony on Bill 23-471, the “Independent Compliance Office Establishment Act of 2019.”

We agree that compliance within the contracting and procurement processes—especially as it pertains to a Certified Business Enterprise (CBE) and First Source—is and should be a primary focus of OCP and our client agencies and partners; however, OCP has identified several issues with Bill 23-471 and would recommend that the Council not move forward with the bill as written. The bill proposes a number of concerning measures that manipulate the District’s procurement process, conflict with the Procurement Practices Reform Act of 2010 (PPRA), and will create inefficiencies and significant delays in current procurement processes. OCP believes the intent of this bill is best achieved through existing processes and authorities.

Bill 23-471 Encroaches Upon the Authority of the Mayor and Chief Procurement Officer

An overarching concern of Bill 23-471 as written, is that it establishes the role of the Chief Compliance Officer (CCO), which encroaches upon the authority of the Mayor, Chief Procurement Officer (CPO), and the contracting officers’ abilities to make sound business decisions in public procurement. Section 104(a)(8)(A) indicates that if an agency fails to meet any goals set forth in section 2341 of the “Small and Certified Business Enterprise Development and Assistance Act of 2005” (CBE Act), the Office of the Chief Compliance Officer (OCCO) may require a portion of the agency’s contracts and procurements be made part of the set-aside program for small business enterprises. This decision is currently under the purview of the

Mayor. Section 104 (a)(8)(B) states that the performance evaluation for each agency director shall reflect the agency's success in meeting compliance goals. This is the determination of the Mayor for those agency directors under the Mayor's authority.

This bill restrains the authority of the CPO and contracting officers' ability to make business decisions pursuant to the authority granted under the Procurement Practices Reform Act of 2010 (PPRA), which seemingly may be overridden by the decisions of the CCO. Additionally, the CCO will have significant authority and influence over the contracting and procurement process, including the ability to make recommendations on changes and reforms to contracting and procurement, yet the bill is silent on the qualifications of this individual.

Furthermore, a portion of the CCO's performance assessment will be based on the number of subcontracting waivers granted to District agencies. This bill asserts that too many waivers are granted; however, I would argue that the number of waivers granted is not an indicative factor upon the soundness of procurement decisions. Waivers should not have any reflection on the performance of an agency or individual.

Bill 23-471 is Inconsistent with Procurement Practices Reform Act (PPRA)

This bill is in conflict with the PPRA with regard to suspensions and debarments and will cause confusion in the CPO's authority to adjudicate suspensions and debarments. In section 104(a)(19)(A) and (C) of the bill, OCP recommends that the references to the debarment process by OCP refer to the PPRA and the CPO's authority and responsibility for that process to avoid any conflicting interpretation. OCP also recommends inclusion of suspension, which may be the CPO's preferred action following the outcome of an OCP investigation.

Section 104(a)(23)(A) and (C) discuss the ability of a CBE or certified joint venture to

appeal certain decisions to the Office of Administrative Hearings including “an enforcement action taken pursuant to this section”; however, it is unclear whether an enforcement action includes a debarment and suspension action taken by OCP. If, in fact, it does, this conflicts with the PPRA, which requires appeals of a debarment or suspension be made to the Contract Appeals Board within 60 days of receipt of the CPO’s decision.

Section 105 (a)(4) of the bill indicates the OCCO’s authority to request each agency with contracting and procurement authority share information considered necessary by the CCO and CPO to be made available through the DSLBD Enterprise System. Note, that the PPRA has transparency requirements for information that agencies are required to share with the CPO and this is not done via the DSLBD Enterprise System, but rather through OCP’s Contracting and Procurement Transparency Portal.

Bill 23-471 Creates Process Inefficiencies

Enacting Bill 23-471, as written, will create a number of inefficiencies. This bill adds transactional requirements that will significantly delay the contracting process. For example, section 104 (a)(7) of the bill adds a minimum of five days to the process of granting subcontracting waivers, by requiring that the CCO’s determination of a waiver request “shall be posted to the Office’s website or such other locations as the Office may establish for five (5) days such that the public shall have reasonable access to the determination before the Chief Compliance Officer grants any waiver.” Currently, the Department of Small and Local Business Development (DSLBD) is not required to post the director’s determination on its website; however, it is required to post a copy of the agency’s waiver request on DSLBD’s website (or other location established by DSLBD) for 10 days to provide the public reasonable notice of the

waiver request.

Section 105(a)(1) of the bill requests a report from OCP regarding small business enterprises (SBEs) and CBEs, for which the data required in this section is not sufficiently clear for OCP to produce, and the data required in this section is not within OCP's scope. OCP does not currently track the number of SBEs that did not receive a prime or subcontract, and this would be extremely burdensome and a manual effort on the contracting staff. Additionally, OCP has no way of tracking SBEs and CBEs that have stopped seeking contracting opportunities, nor would we be able to speculate the reason why a business stopped seeking such opportunities.

Section 105 (a)(2) of the bill also requires that OCP submit a report for each proposed construction and non-construction contract in excess of \$1 million before the District accepts submission of a bid or proposal. OCP strongly objects to this requirement. Adding this requirement to the current process for contracts in excess of \$1 million creates undue burden on procurement professionals and their resources and adds delays to fulfilling these contract requirements. The District has many complex and time-sensitive requirements, and the procurement function needs to be flexible enough to meet these demands. Submitting reports and reviews prior to the government even being able to receive proposals will be ineffective, inefficient and cause significant delays in the contracting process, and OCP is unclear on the purpose or value of such a requirement.

Increased Investment in Small Businesses

Bill 23-471 significantly disregards the District's progress in contracting and procurement, and its increased investment in small and local businesses. Under Mayor Bowser's leadership, and for five straight years, the Bowser Administration has increased total SBE

spending. In fact, since FY 2015, we have increased SBE participation by more than 180 percent, from a goal of \$317 million in FY 2015, to over \$890 million spent in FY 2019. This did not happen by accident, but rather by the focus, expertise, and leadership of the District's procurement professionals and DSLBD. Mayor Bowser has set a goal to spend more than \$910 million with SBEs in FY 2020 and, just as in prior years, our entire administration is focused on achieving this goal.

In closing, I would like to emphasize that the basis of public procurement is transparency. This bill, as written, jeopardizes transparency by allowing an independent officer to influence the District's procurement process, which is already safeguarded by strict laws and procedures. For this reason, I recommend that Council not adopt this bill.

I would like to thank Mayor Bowser and City Administrator Young for their continued leadership and guidance, along with my agency director colleagues who have diligently focused on meeting the Mayor's goals of SBE participation. I would also like to thank Director Morris-Hughes, the DOES First Source Team, and DSLBD for their continued partnership in the procurement process. Finally, I thank the procurement and administrative professionals at OCP for their continued efforts to advance the agency's mission. This concludes my testimony and I am happy to answer any questions.