

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement**



PUBLIC OVERSIGHT ROUNDTABLE ON

“Timeliness of Council Contract Submissions by the Executive and Retroactive Contracts”

Testimony of
DIRECTOR GEORGE A. SCHUTTER, III
Chief Procurement Officer

Before the

Committee of the Whole
The Honorable Phil Mendelson, Chairman

&

Committee on Facilities and Procurement
The Honorable Robert C. White, Jr., Chairman
Council of the District of Columbia

John A. Wilson Building
Hearing Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

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Good morning, Chairman Mendelson, Chairman White, members of the Committee of the Whole and the Committee on Facilities and Procurement. I am George Schutter, Chief Procurement Officer of the District of Columbia and Director of the Office of Contracting and Procurement. Today, I am pleased to provide testimony on the “Timeliness of Council Contract Submissions by the Executive and Retroactive Contracts.”

As always, I appreciate the opportunity to offer testimony before your respective committees on procurement in the District of Columbia. Thank you, Chairman Mendelson and Chairman White.

THE DIFFERENCE BETWEEN RETROACTIVE CONTRACTS AND TIPPING ACTIONS

I would like to begin my testimony by addressing some details that were mistaken, or otherwise over-simplified, in the reporting leading up to this hearing. In its attempt to describe the District’s procurement process, the reporting conflated contracts that require retroactive Council approval with what are commonly referred to as ‘tipping actions’. Contracts requiring retroactive approval and tipping actions are not the same thing.

A contract requires retroactive approval if the District obligates or spends funds in excess of \$1 million within a 12-month period without having received Council approval in advance. Both the Procurement Practices Reform Act and Home Rule Act prohibit this. None of OCP’s contracts in question at this hearing required retroactive Council approval.

A tipping action, by contrast, does not entail the Executive exceeding its authority. A tipping action is a standard contract administration practice. Tipping actions occur where there was a partial authorization of services in an option period. The tipping action occurs when the contracting officer seeks to authorize the remaining services in the option period. Council

approval is sought prior to obligating or spending funds in excess of \$1 million, not retroactively. To conflate a retroactive contract with a tipping action is to ignore the difference between a prohibited procurement practice and the Executive operating well within its authority. That is, Mr. Chairman, equating the two ignores the difference between what is legal and what is not. Tipping actions are, on occasion, a necessary part of the contracting process.

As the Chief Procurement Officer for the District entrusted with dutifully carrying out the government's contracting in accordance with the law, I cannot stress how absolutely essential it is that we are clear and accurate on this point and do not confuse the public to the contrary.

CAUSES OF TIPPING ACTIONS

A 'tipping action' is a something that other jurisdictions would deem contract administration. Tipping actions can occur in a number of circumstances. For instance, District contracts include standard terms that allow for the government to exercise options, either in part or in whole. A tipping action is created any time the contracting officer, under that standard option clause, authorizes partial services to proceed under the option. The tipping action, then, is the contracting officer seeking the review and approval of the remainder of the option period prior to authorizing the services above \$1 million.

For example, in the case of the MBI Health Wraparound services contract, the option period was partially authorized after change in agency leadership to review the efficacy of the services provided. Council approval was sought prior to the contracting officer authorizing the remaining services under the option period.

Other instances in which a tipping action can occur is where there is a change in federal legislation or budget negotiations with a federal entity. Such was the case with five of the six

CFSA tipping actions approved by Council since January 1, 2019. The Notice announcing this roundtable limited tipping actions to instances where the Executive has experienced unanticipated increases to the cost of a base or option period of a contract causing the contract option period value to rise above \$1 million. However, while the causes of tipping actions are broad, they share one common feature – they are all a standard tool of contract administration and are actions sought prior to authorization, not retroactively.

REDUCING RETROACTIVE CONTRACTS IN THE DISTRICT

Mayor Bowser has provided strong and effective leadership in increasing the efficiency of the District's procurement system and reducing the number of contracts requiring retroactive approval. The Procurement Accountability Review Board (PARB), which Mayor Bowser established in 2015 has, in my view, been extremely effective reforming the District's procurement system. It is a means by which the most senior District officials can have an intensive look into District procurements, ascertain best practices, and reform practices across the District. The Board reviews all retroactive contracts. At our first meeting in June 2015, the Board reviewed 21 retroactive contracts, 19 of which fell under OCP's authority, the cumulative value of which was around \$1.2 billion.

Since that meeting, the Mayor, City Administrator, and I have worked diligently to reduce the number of contracts that require retroactive Council approval. Over the past four years, there has been a significant decrease in the number of retroactive contracts. In Fiscal Year 2019, OCP had no contracts requiring retroactive approval. I am very proud of the Executive's progress in the award and administration of our District contracts. I am pleased that we continue to demonstrate the highest levels of integrity and transparency.

CONCLUSION

In conclusion, I would like to thank you Chairman Mendelson and Chairman White for the opportunity to testify this morning. Procurement in the District is unique as no other state requires its state legislature to approve individual contracts. Nevertheless, I will continue to ensure that District procurements are conducted in accordance with the law and with the highest degree of integrity and transparency. Tipping actions are within the Executive's procurement authority and not a means of circumventing either the law or Council's oversight. This is standard contract administration, administering the standard terms of District contracts in line with best practices. We have dedicated significant resources to reducing retroactive contract actions and we will continue to work with the Executive, Council, and industry to further improve the District's procurement process to achieve the best value possible for District residents.

Thank you again for the opportunity to testify before you today. I would be happy to answer any questions you may have.