

SUMMARY OF COMMENTS BY DIVISION 10 TO BILL 6-191, THE  
DISTRICT OF COLUMBIA PROCUREMENT PRACTICES ACT OF 1985

The D.C. City Council Committee on Government Operations has drafted a bill whose purposes are to simplify, clarify and codify the procurement practices of the District of Columbia executive branch of government and all agencies operating under the authority of the Mayor. Procurement includes acquisition of supplies, services, construction and property. Independent agencies who obtain separate Congressional funding are not covered.

The proposed bill has eleven titles including General Provisions and definitions, Procurement Organization, Source Selection and Contract Formation, Specifications, Bonds and Construction Procurement, Cost Principles, Supply Management, Administrative and Civil Remedies, Contracts Appeals Board, Ethics in Public Contracting and Miscellaneous. The bill follows closely similar legislation passed a few years ago in Maryland. The bill specifies that procurement regulations be promulgated which will deal in detail with the general topics covered by the bill. This procedure is in accord with both the federal and state governments which have procurement codes.

Division 10 personnel reviewed the proposed bill in detail. We approve, generally, the bill and its areas of coverage as they comply with our suggestions of past years. We made comments in the areas of consistent or clarifying terminology, due process in the debarment or suspension of bidders and the make up of the Board of Contract Appeals.

The comments are endorsed by the Standing Committee on D.C. Procurement, chaired by Laurence Schor, and the Division Steering Committee, chaired by Raymond S.E. Pushkar.



COMMENTS REGARDING BILL 6-191

Consistent Terminology

1. "rules and regulations"; not "rules"
2. "two (2)"; not "2"
3. "material"; not "materiel" (p. 15, 16)

|                     |   |
|---------------------|---|
| Page 2, Line 23     | Insert "and efficiency" after "economy"   |
| Line 54, 55         | Omit--redundant; insert Section 201(a)(b)(c) in this location but eliminate repetitive provisions   |
| Page 3, Line 5      | "supers <u>e</u> ded" instead of "super <u>c</u> eded"  |
| Line 47             | Insert "and regulations" after "rules"  |
| Page 4, Line 5      | "subordinate"--Is this a term of art?   |
| Line 15             | Insert "." after "employees"; delete "except"; " <u>C</u> ontracts" instead of " <u>c</u> ontracts"; delete "for the receipt or"  |
| Line 17             | Delete "the making of a" and insert in its place "funded by"; "grants <u>s</u> -in-aid" instead of "grant-in-aid"; delete "for"   |
| Line 19             | Insert "are included in this act; provided, however, this act shall not apply to the receipt of or the making of a grant-in-aid or for federal financial assistance" between "assistance" and "." |
| Line 33             | Insert "for its needs" between "services" and "."   |
| Line 47             | Replace "may" with "shall"; insert "or such other person as the Mayor deems appropriate," after "agency,"   |
| Page 5, Lines 11-15 | Statement is circular--no meaning is added (see p. 7, para. 9)  |
| Line 23             | Replace "as alternate" with "for the"; full delegation of authority means not "alternate"   |
| Line 25             | "officer" instead of "offic <u>e</u> rs"  |
| Line 31             | Delete ", " after "office"  |
| Line 39             | "of the extent" is unnecessary  |

Page 6, Line 29 "the Mayor"--This provision should not be construed as allowing the Mayor to assume responsibility for entering contracts and thereby bypass this statute.

Line 45 This provision should be narrowed.

Line 53 Insert ", but in no event may this provision be construed to authorize avoidance of this statute's purposes" between "laws" and "."

Page 7, Lines 49-55 Omit--see (12); also it is not included on p. 26 correctly

Page 8, Line 9 Insert "two" after "from"; "(2)" instead of "2"

Page 10, Line 25 Insert "the" between "in" and "most"

Line 43 Align "(D)" with "(A)", "(B)", and "(C)"

Page 11, Lines 49-53 What is contemplated?

Page 13, Line 21 Insert "evaluating" after "of"

Line 23 Delete "soliciting"; "bid" instead of "bidder"; "offer" instead of "offeror"

Line 51 "an" instead of "a"

Line 53 Delete "contractual"; insert "under the contract or covered by the terms of the bond" between "obligation" and "."

Page 14, Lines 13-55 Move to page 2

Page 15, Lines 1-7 Move to page 2

Line 15 Insert "and regulations" after "rules"

Line 55 "material" instead of "materiel"

Page 16, Line 7 "the public at large"--What does this mean?

Line 13 Delete "government"

Line 33 "bar coding"--This would be better in regulations.

Line 39 "Material" instead of "Materiel"

Line 47 "Mayor shall"--Does Council have this authority?

|                      |   |
|----------------------|---|
| Page 17, Lines 24-25 | Redundant, circular   |
| Line 43              | Replace the "to" after "changes" with "and promulgate"  |
| Line                 |   |
| Line 51              | " <u>constructions</u> " instead of "construction"  |
| Line 55              | Insert "and" after "MMIS"   |
| Page 18, Line 15     | Replace "construction" with "real property improvements"  |
| Line 51              | Delete ", " after "purchase"  |
| Page 19, Line 45     | Delete "procurement"--extraneous  |
| Page 20, Line 20     | Replace ";" with ", including regulations to establish text of clauses required under Section 507."   |
| Line 47              | "progressive"--What does this mean?   |
| Page 21, Line 7      | " <u>analyses</u> " instead of "analysis"   |
| Line 33              | Delete "initial"  |
| Line 37              | Insert "and regulations" after "rules"  |
| Line 47              | Insert "of submission of final proposed rules and regulations by the Mayor" between "days" and ","; insert "and regulations" between "rules" and "shall"            |
| Line 51              | "Any"--Does Council really want this? Insert "or regulations" after "rules"   |
| Page 22, Line 41     | Why not an information office in the Director's office?   |
| Page 23, Line 55     | Insert "to where" after "agencies"  |
| Page 24, Line 1      | "necessary" instead of "nes <u>cessary</u> "  |
| Page 26, Line 17     | Insert "The term "Districted-based business" shall be construed the same as "local-business enterprise" under Section 1-1142 of the D.C. Code." after "businesses." |
| Line 55              | Insert "one" after "selecting"; "(1)" instead of "1"  |

Page 27, Line 9 Insert "and proposals" after "bids"

Line 11 Insert "or proposal" after "bid"

Line 17 Insert "or proposal" after "bid"

Line 23 Insert "/proposers" after "bidders"

Line 25 Insert "/proposers" after "bidders"

Line 29 Insert "/proposed" between "bid" and ";"

Line 31 Insert "/proposal" after "bid"

Line 41 Insert "and all construction contracts" after "306"

Line 51 Insert "one" after "only"; "(1)" instead of "1"

Page 28, Line 1 Replace "public" with "best"

Line 2 Insert "of D.C." after "interest"; insert "one" after "use"; "(1)" instead of "1"

Line 49 Insert "and regulations" after "rules"

Page 29, Line 3 Insert "one" at beginning of line; "(1)" instead of "1"

Line 17 Delete "indicate the" and replace with "list all evaluation factors and indicate"

Page 30, Line 18 Replace "procedures" with "regulations"

Line 23 "medical" instead of "medial"; delete "and" between "services," and "real"

Line 25 Insert ", legal services, expert witnesses" between "appraisal services" and "."

Line 41 Insert "one" after "that"; "(1)" instead of "1"

Line 45 Insert "one" after "only"; "(1)" instead of "1"

Lines 49-51 Too broad

Page 31, Line 31 Insert "one" after "only"; "(1)" instead of "1"

Page 33, Line 23 Replace "officer's" with "offeror's"

Line 35 This will be burdensome for small contracts --the Feds use \$100,000 minimum

Page 34, Line 31 Insert "to be reimbursable by the contracting officer" between "writing" and ","

Page 36, Line 55 Insert ", as necessary to determine responsibility" between "government" and "."

Page 37, Line 23 Insert "three" after "period of"; "(3)" instead of "3"

Line 51 Insert "three" after "equal to"; "(3)" instead of "3"

Line 53 Replace "value of the loss to the District government" with "contract price"

Page 39, Line 33 Insert "The term "confidential" shall be construed in accordance with the District of Columbia Freedom of Information Act." after "business."

Lines 53-55 This seems too broad.

Page 40, Line 3 Insert "willful" after "any"

Page 42, Line 51 Delete "," after "those"

Page 43, Lines 23-25 "This amount is subject to revision by the procurement regulations."--A regulation cannot modify the statutory amount.

Line 31 Replace "District" with "Contracting"

Line 33 Replace "government" with "Officer"

Page 44, Line 15 Insert "or" after "bid"

Line 25 Insert "prior to commencing performance" after "furnish"; insert "in the full amount of the contract" after "bond"

Line 31 Replace "[Director] Mayor" with "Contractin Officer"

Line 35 Replace "[Director] Mayor" with "Contractin Officer"

Line 43 Insert "prior to commencing performance" after "furnish"

Page 46, Line 5 Leave Little Miller Act as is. Title I, § 1-1104 et seq.

Line 9 "subcontractor" instead of "subcontractors"

Line 27 "judgment" instead of "judgement"

Page 47, Line 42 Insert "(8) Warranties"

Line 51 Replace "of" with "on"

Page 48, Line 11 Is this consistent with Minority Contracting Act?

Page 49, Lines 13-19 This is of doubtful enforceability.

Line 55 Delete "," after "principles"

Page 50, Line 19 Delete "and"

Page 52, Line 53 Replace "business" with "contractor"

Line 55 Replace "business" with "contractor"

Page 53, Line 1 Replace "business" with "contractor"

Lines 5-7 There must be a due process hearing.

Page 54, Line 9 "unsatisfactory"--This is unconstitutionally vague.

Line 19 Delete "minority"; insert "a" after "as"

Line 21 Insert "minority business enterprise as" at beginning of line

Line 33 Insert "the District government" after "in"

Lines 37-39 There should still be a separate hearing.

Page 55, Line 5 Delete "not"

Line 31 Insert "final" after "a"

Line 33 Delete "hearing and"

Line 35 Insert "final" after "a"

Line 51 Insert "final" after "a"

Page 56, Line 3 Insert "final" after "a"

Line 17 Delete "misrepresentation of fact or"--too vague.

Line 53 Replace "a" with "an independent"

Page 57, Line 57 Replace "4" with "5"

Page 58, Line 25 Replace "The chairperson and 2" with "All"

Line 29 Insert ", but need not be D.C. residents" between "law" and "."



Page 59, Line 13 "award" instead of "a ward"

Line 19 Replace "determination" with "final decision"; insert "or contracting officer" after "Director"

Line 27 Insert "final" after "a"; insert "or contracting officer" after "Director"

Line 29 Insert "final" after "appeal the"

Line 47 Insert "The Board shall issue its decisions no later than 180 days after the record of the appeal is closed." after "Register."

Line 53 Insert "final" after "a"

Page 60, Line 13 Insert "final" after "a"

Line 15 Delete "other"

Page 62, Line 35 "subsection (a)" instead of "section (a)"

Line 45 What is a "direct" protest?

Page 66, Line 19 Insert "in" after "be"

Lines 31-41 Seems too limiting

Page 68, Line 43 "judgment" instead of "judgement"

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