

ENROLLED ORIGINAL

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Procurement Practices Act of 1985 to streamline and clarify the sections of the act governing privatization contracts, to ensure that solicitations for proposed privatization contracts include notification to District government employees and certified labor organizations on how to form a legal business entity and bid for the contracts, to require the Mayor or independent agency head to transmit to the Council a determination and findings describing the expected cost, economic, and performance impacts of a privatization contract and demonstrating that the privatization contract will yield savings of at least 5 percent over the duration of the contract, to enumerate the protections for displaced employees that must be included in a privatization contract, to establish the performance requirements that must be included in a privatization contract, to describe the responsibility of the Mayor or independent agency head to consult with and assist public employees when the government proposes or awards a privatization contract; to require the D.C. Auditor to transmit to the Mayor and Council an annual report on selected privatization contracts and to report his or her findings as to whether the contracts are meeting the cost and performance targets; to require the Mayor to review the merits of contracting in for services when the Auditor finds that a privatization contract is not meeting the cost or performance targets and to report his or her findings to the Council within 90 days, and to require the Mayor to issue implementing regulations within 180 days of the effective date of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Equity in Contracting Amendment Act of 2000".

Sec. 2. Section 107 of the District of Columbia Procurement Practices Act of 1985 is amended as follows:

(a) Paragraph (16) is amended to read as follows:

"(16) "Contractor" means any business which enters into a contract with the District, or a public employee, or public employees who enter into a contract with the District pursuant to section 105b.".

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(b) New paragraphs (14B), (15B), (29A), (30B) and (36B) are added to read as follows:

"(14B) "Contracting in" means a process in which the District government provides a good or service using District government employees, departments, or agencies when the good or service has been provided, prior to contracting in, by a private-sector firm, non-profit organization, or other external entity, to or on behalf of the District government.

"(15B) "Contracting out" means a process in which the District government enters into a contract with a private-sector firm, non-profit organization, or other external entity, to provide a good or service to or on behalf of the District government that has been provided, prior to contracting out, by District government employees, departments, or agencies.

"(29A) "Fully allocated cost" means the total direct and indirect costs of providing a good, service, or function. Fully allocated cost should reflect, but is not limited to, direct personal services costs, including wages, salaries, and fringe benefits; non-personal services costs including materials, supplies, equipment, maintenance and repairs, utilities, insurance, travel, capital and equipment depreciation cost; and general and administrative overhead.

"(30B) "Managed competition" means a process in which a District government agency or group of District government employees competes with private-sector firms or non-profit organizations, or other external entities to provide a good or service to or on behalf of the District government.

"(36B) "Privatization contract" means a contract by which the District government enters into an agreement with a private-sector firm, non-profit organization, or other external entities to provide a good or service to or on behalf of the District government that has been provided, prior to contracting out, by District government employees, departments, or agencies.".

Sec. 3. Section 105b of the District of Columbia Procurement Practices Act of 1985 is amended to read as follows:

"(a) Prior to issuing a solicitation for a privatization contract pursuant to this section, the District government agency on whose behalf the solicitation will be issued shall prepare an estimate of the fully allocated cost associated with providing the relevant goods or services using District government employees. The agency shall transmit this estimate to the contracting specialist responsible for the solicitation, who shall retain the estimate as part of the official contract file.

"(b) Any solicitation for a proposed privatization contract, issued pursuant to this section shall include information describing how current District government employees may exercise the right to bid on the contracts.

"(c) Prior to awarding a privatization contract, and prior to modifying a contract, to provide goods or services to or on behalf of the District government that currently are provided by District government employees, departments, or agencies, the Mayor or independent agency

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head shall transmit to the Council a determination and findings that:

"(1) Compares the current fully allocated cost of providing the service using District government employees, departments, or agencies, using the estimate described in subsection (a) of this section, to the fully allocated costs associated with contracting for the service;

"(2) Demonstrates that the privatization contract will provide savings of at least 5% over the duration of the contract, in terms of total cost or the unit cost of providing the good or service;

"(3) Assesses the impact of the privatization contract on the District's economic and tax base, including the affects on employment opportunities for District residents, business creation, business development, and business retention;

"(4) Describes the expected impact of the privatization contract on the quality of goods or services provided to or on behalf of the District government, including performance targets and requirements for the contractor and potential affects of the contract on the health and safety of District residents; and

"(5) Includes a written confirmation of review by officials including the Chief Financial Officer, the Corporation Counsel, and the Chief Procurement Officer.

"(d) Any privatization contract, including a lease or other agreement, or any contracting policies and procedures relating to these contracts, to provide goods and services to or on behalf of the District government, including a contract resulting from a process of managed competition, shall provide that:

"(1) The Mayor or independent agency head shall complete the determination and findings described in subsection (a) of this section and transmit the determination and findings to the Council prior to the award of the contract;

"(2) Any contractor who is awarded a contract that displaces District government employees shall offer to the displaced employee a right of first refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for at least a 6-month period during which the employee shall not be discharged without cause;

"(3) Any District employee who is displaced as a result of a privatization contract, and is hired by the contractor who was awarded the privatization contract, shall be entitled to the benefits provided by the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 351 *et seq.*) ("Act"). For purposes of this section, service employees of the water and sewer fund shall be treated by the contractor and entitled to all benefits as if those employees were not excluded from application of the Act;

"(4) If the employee's performance during the 6-month transitional employment period described in paragraph (2) of this subsection is satisfactory, the contractor shall offer the employee continued employment under terms and conditions established by the contractor;

"(5) The privatization contract shall incorporate specific performance criteria and

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the contractor shall submit monthly reports to the District government contracting officer on the contractor's compliance with the performance criteria; and

"(6) The privatization contract may be canceled if the contractor fails to comply with the performance criteria set out in the contract.

"(e) When contracting out occurs, the Mayor or the independent agency head shall make efforts to assist affected District employees and to promote employment opportunities for District residents with the contractor. These efforts shall include:

"(1) Consulting with union representatives and District government employees who would be affected by the privatization contract, and providing prior notification of at least 30 days of any adverse impact of a privatization contract to District government employees who would be affected by the contract, including notification to a labor organization certified as the exclusive representative of employees affected by the contract;

"(2) Providing alternative employment in the District government to displaced employees if there are positions for which those employees are qualified; and

"(3) Encouraging the contractor to offer employment to qualified District residents before offering employment to qualified nonresidents.

"(f)(1) The Auditor shall review selected privatization contracts, based on the dollar value and scope of a contract, its potential impact on the health and safety of District residents, its potential impact on economic development and employment opportunities in the District, and other factors that the Auditor considers appropriate. The Auditor shall render, in an annual report to the Mayor and the Council, due 180 days after the effective date of the Equity in Contracting Amendment Act of 2000 for calendar year 2001, and on the same date in subsequent years, his or her determination as to whether the contracts are achieving:

"(A) The 5% savings target set forth in subsection (a)(2) of this section; and

"(B) The performance standards and targets set forth in the determination and findings described in subsection (a) of this section and incorporated into the contracts as required by subsection (c)(5) of this section.

(2) The Auditor may also report that the cost and performance data are inconclusive, but if the District has failed to collect, maintain, or provide cost and performance data required by this section, the Auditor may reasonably conclude that cost or performance targets are not being met in the lack of any or minimal evidence to the contrary.

"(g) If the Auditor finds that a privatization contract has not met the cost saving target of 5% set forth in subsection (a)(2) of this section, or has not met the performance targets set forth in subsection (a)(4) of this section and incorporated into the contract as required by subsection (b)(7) of this section, the Mayor, or independent agency head, shall review the merits of contracting in for the goods or services. The Mayor, or independent agency head, shall review the cost, the potential performance impact, the potential impact on the health and safety of District residents, and the potential impact on economic development and employment

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opportunities associated with contracting in for the goods or services. Within 90 days of the Auditor's finding that a privatization contract is not meeting the cost saving or performance criteria, the Mayor, the Mayor's designee or the independent agency head, as appropriate, shall present to the Council in a public hearing the Mayor's determination about whether the District shall contract in for the service.

"(h) The Mayor shall issue rules, in accordance with the procedures set out in section 205, to implement this section within 180 days of the effective date of the Equity Contracting Amendment Act of 2000. The rules shall include procedures for public employees to submit bids for a proposed privatization contract, guidelines for the preparation of the cost analysis, economic impact analysis, and performance analysis required in subsection (c) of this section, and objective criteria for identifying programs or services that are appropriate for privatization and defining core or uniquely governmental responsibilities that are inappropriate for privatization.".

Sec. 4. Section 105c of the District of Columbia Procurement Practices Act of 1985 is repealed.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact report in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233 (c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in

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section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia