

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: February 6, 2018

SUBJECT: Report on Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2018”

The Committee of the Whole, to which Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2018”¹ was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

On July 11, 2017, Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2018”² was introduced by Councilmember Kenyan McDuffie with co-introducers Councilmembers Allen, Bonds, Cheh, Grosso, Nadeau, Silverman, R. White, and T. White. Bill 22-395 would make amend the District of Columbia Quick Payment Act of 1984 to require a contractor-subcontractor dispute resolution clause in any contract with the District, and would amend the Procurement Practices Reform Act of 2010 (PPRA) to provide for a single Internet portal with links to all active procurement solicitations over \$100,000 and to establish a website that contains electronic vendor payment information with the ability for invoicing and payments. As originally introduced, Bill 22-395 addressed only a solicitation portal website.

¹ Formerly the “Accessible and Transparent Procurement Amendment Act of 2017.”

² *Id.*

On September 19, 2017, Bill 22-439, the “Quick Payment Amendment Act of 2017” and Bill 22-440, the “Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017” were introduced by Councilmember McDuffie with co-introducers Councilmembers Bonds, Nadeau, Todd, and R. White. Bill 22-439 bill would have reduced the number of days a District agency has to either make a payment to a vendor or notify the vendor of a defect. Bill 22-440 would have required that the District mediate disputes between contractors and subcontractors. The Committee Print for Bill 22-395 includes provisions addressing issues raised by Bill 22-395, Bill 22-439 and Bill 22-440 as introduced.

Procurement Organization

Under the Procurement Practices Reform Act of 2010, the Office of Contracting and Procurement (OCP), headed by the Chief Procurement Officer (CPO), is the central office in the District government for procurement of goods and services. Under that law, OCP is an independent agency with the exclusive authority to administer the PPRA, with certain exceptions. Most notable of these exceptions are several agencies that are exempt from the authority of the CPO that must follow the PPRA. There are currently 12 agencies that are exempt from the CPO’s authority. An additional 12 agencies are exempt from both the authority of the CPO and the PPRA, meaning that any amendments to the PPRA are not applicable to those agencies, including amendments proposed by Bill 22-395.

Solicitation Accessibility

As introduced, Bill 22-395 would require that the Mayor maintain a single Internet website that provides “machine-readable” information on all solicitations for contracts over \$25,000 searchable by several elements including keyword, product code, or agency. Such a website is similar to the Federal government’s centralized solicitation portal at <http://www.fbo.gov> (Federal Business Opportunities) maintained by the General Services Administration. Unfortunately, the PPRA’s exempting of several agencies from the CPO’s authority makes it difficult for such a system in the District because at least 12 agencies use disparate systems for posting contract solicitations. OCP, which handles the vast majority of contracts does post most solicitations on its Procurement Automated Support System (PASS) which is generally searchable. However, even OCP must post some solicitation outside of PASS due to the technical limitations of PASS for certain contracts – mostly complex contracts for construction which must include technical drawings. The other agencies independent of the CPO have their own solicitation websites. Unlike PASS, the independent agency solicitation websites are not searchable and contain mostly downloadable documents, not an integrated solicitation system like PASS.

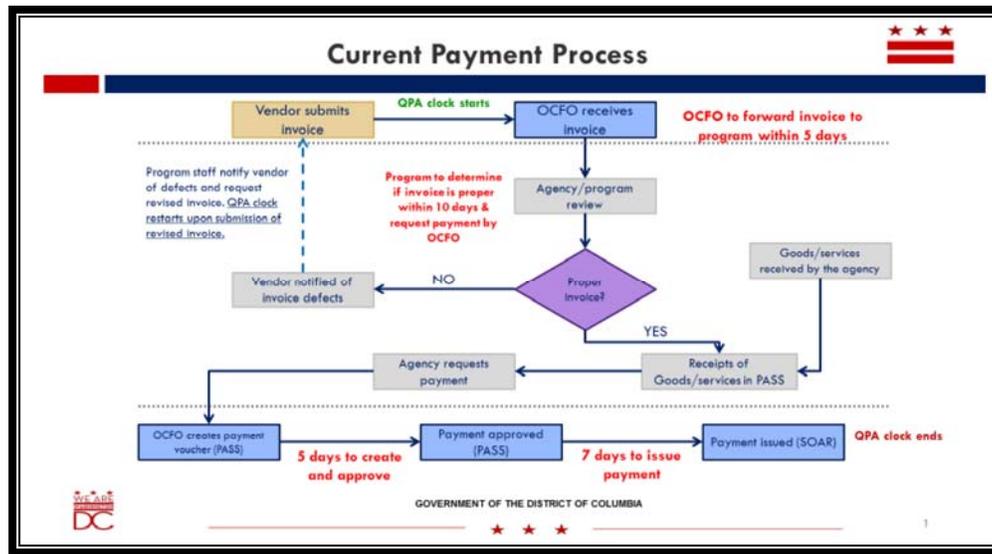
The Committee commends the intent of the underlying solicitation website proposed by Bill 22-395, as introduced. However, testimony from the CPO, as well as the Chief Financial Officer, Jeffrey DeWitt, who oversaw all procurements for the City of Phoenix, Arizona before his tenure in the District, indicated that a central website for all solicitations, with additional functionality for payment and invoicing, cost Phoenix approximately \$40 million. He added that such a system for the District which has a higher volume of procurements, could cost in excess of \$50 million.

Instead, the Committee recommends two improvements to the current law that will further centralize solicitations. First, the Committee Print directs that each procurement over \$100,000, except for goods or services procured through the supply schedule, be solicited through OCP's e-procurement system – currently PASS – to the greatest extent practicable. The Committee intends this provision to allow certain complex contracts – such as construction – to continue to be solicited outside of PASS. However, other contracts for goods and services over \$100,000 by agencies independent of the CPO would have to utilize PASS. Practicable does not include bureaucratic impediments whereby agencies with independent authority may not want to cede parts of that independence by using OCP's system. Second, the Committee Print would require that OCP create a central website that contains links to each of the procurement solicitation websites of the agencies independent of the CPO's authority so that there is a single website that potential vendors can visit to find procurement opportunities across the District. The threshold for solicitation transparency in these provisions was raised from \$25,000 in the introduced version to \$100,000 to be consistent with Section 407 of the PPRA which provides for a streamlined process for small purchases.

Quick Payment Act Amendments

The District of Columbia Government Quick Payment Act of 1984 (QPA) governs timelines for payment of contractors and vendors by the District government. In addition, the QPA sets forth rules and regulations for contract terms between the District government and vendors that affect invoicing and payment for contracts. Generally, the QPA requires payment by the District to a prime contractor within 30 calendar days of the receipt of an invoice. According to the CFO, 30 days is the standard for most government entities. As introduced, Bill 22-439 would have reduced the District's payment deadline from 30 days to 15 days and would have reduced the number of days that a District agency has to notify a business in writing of any defect in the invoice, product, or service which would affect payment.

According to the CFO, 93 percent of the District's 376,000 vendor payments totaling \$12.3 billion were made in compliance with the current QPA provisions of 30 days. He went on to detail the extensive manual check involved between contracting personnel and CFO personnel before a payment can be issued. Such a check normally involves a three-way match whereby a valid purchase order from a government agency is checked against a confirmation that the goods and services in the purchase order were received and against a valid invoice from the vendor for the goods and services. This process is outlined in the table below included with the CFO's testimony.



Further complicating payment of invoices is the fact that the District does not currently accept electronic invoices and cannot make electronic payments to all vendors. This further slows the payment process because invoices and payments must be issued manually.

Much of the testimony received by the Committee with regard to quick payment was from government subcontractors concerned that slow government payments to prime-contractors impacted cash flow at the prime and subcontractor levels. Testimony from Roscoe Grant indicated that change orders from the District also result in inadequate payment because not all parties may have agreed to the changes when the District was ordering additional work.

The Committee addressed similar concerns in 2016 as part of the Procurement Integrity, Transparency, and Accountability Amendment Act of 2016 (PITAA) which strengthened quick payment requirements and provided additional protections for contractors and subcontractors related to change orders by the District. That law requires that vendors pay subcontractors within 30 days of the completion of the work instead of the previous 60 days threshold and set a base interest charge of 1.5% for late payments.³ That law also requires a common contract clause that prohibits the District or a prime contractor from requiring additional work under a change order unless the parties agree to the work and funding has been identified. In addition, the new law created a new website that lists District payments to vendors so that subcontractors can verify when a vendor has been paid in anticipation of their own payment.

The Committee recognizes the need for predictability and cash flow for District vendors and members of the subcontractor community. However, the Committee is concerned that reducing QPA deadlines below 30 days could have the unintended consequence of imposing additional penalties on the District for payments that were otherwise not problematic – the 93 percent that currently meet the requirements of the QPA. Instead, to address the underlying concern raised by Bill 22-239, the Committee Print would establish in law a more advanced vendor payment portal that will allow anyone to view payments by the District, and would provide for

³ *Id.*

future functionality with e-invoicing and vendor payments. The payment functionality of this website has already been created at <http://vendorportal.dc.gov>. The Committee believes that increased transparency and efficiency in the District's payment process is a more reasonable approach to ensuring quick payment than lowering the payment timeliness threshold.

Contractor-Subcontractor Dispute Resolution

The QPA explicitly bars the District from being a party to a dispute between a contractor and a subcontractor with regard to payment and penalties:

A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under the provisions of this subchapter does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute. – DC Official Code § 2-221-02(f).

This is based in part on longstanding government procurement principles that dictate that there is no privity of contract between the government and subcontractors. Put simply, under the law, subcontractors have no contractual relationship with the government, therefore there is limited government recourse for a subcontractor in a dispute with a prime contractor. With very limited exception, provisions in a prime contractor's government contract do not flow down to subcontractors. Like any almost any other contractual dispute between private parties, the venue to resolve contractor-subcontractor disputes is the court system. However, testimony from several subcontractors has recommended that the government resolve disputes between contractors and subcontractors – especially those disputes related to payment. The Committee supports the concept of reducing litigation and promoting dispute resolution amongst vendors and subcontractors supported by District funds.

The Committee notes that PITAA also sought to address this concern in creating the new Ombudsman for contracting and procurement. That office serves “as a vehicle for contractors and subcontractors performing work or providing services under a District contract to communicate their complaints and concerns regarding contracting, procurement, or a specific contract, through a single entity” and attempts “informally to facilitate a resolution of a dispute between the contracting officer, the prime contractor, and the subcontractor as appropriate.” Such services are in addition to the existing law in the QPA that requires standard contract language between the District and a vendor that requires that that vendor pay subcontractors timely. According to the CPO, because of that common contract clause, the District can already send a “cure notice” to a vendor that is not paying a subcontractor in violation of the vendor's contract with the District. According to the CPO, OCP does not currently track cure notices, but testified that an unaddressed cure notice could lead to penalties including debarment. Finally, current law also requires payment bonds for any construction contract in excess of \$100,000. The purpose of a payment bond is to provide surety protection for all persons supplying labor or materials to a contractor or subcontractor on a construction project. In the event a person is not paid within 90 days after furnishing labor or materials, that person has a right of action in court on the payment bond for the unpaid amount.

Despite the provisions already existing in law, the Committee understands that there is a desire by the subcontracting community for additional avenues for resolving disputes that do not rely on the good will of a prime contractor or on the acrimony of legal action in the courts. Thus, the Committee Print includes a new common contract clause in contracts between the District and a prime contractor requiring that the prime contractor include in its contract with a subcontractor a dispute resolution clause that requires the contractor, at the election of the subcontractor, to participate in negotiation, mediation, or arbitration before seeking administrative or judicial resolution. According to one expert commentary on the subject:

The courts hold that parties have a constitutional right to access to the courts to resolve disputes. Parties who do not wish to avail themselves of this almost heavenly right have to make it clear in the agreement. Therefore, any agreement that does not specify arbitration or mediation as the remedy for resolving disputes will “default” to the court system.⁴

A requirement for an alternative dispute resolution clause will remove this default and encourage contractors and subcontractors to contemplate better alternative dispute resolution procedures to decrease litigation and encourage good business practices. Even without the requirement for a common contract clause, contractors and subcontractors currently can negotiate an alternative dispute resolution process as part of their contract. This makes it mandatory.

Conclusion

Bill 22-395, as refined in the Committee Print, contains important updates to the PPRA and other District laws to improve solicitation transparency, payment and invoicing efficiency, and dispute resolution. The Committee therefore recommends approval of Bill 22-395 as reflected in the Committee Print.

II. LEGISLATIVE CHRONOLOGY

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|--------------------|--|
| July 11, 2017 | Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2017” is introduced by Councilmember McDuffie. |
| September 19, 2017 | Bill 21-439, the “Quick Payment Amendment Act of 2017” is introduced by Councilmember McDuffie. |
| September 19, 2017 | Bill 21-440, the “Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017” is introduced by Councilmember McDuffie. |
| July 21, 2017 | Notice of Intent to Act on Bill 22-395 is published in the <i>District of Columbia Register</i> . |

⁴ Robert J. Miletsky, Esq., *Choose the Right Construction Dispute Resolution Method*, International Risk Management Institute, Inc. (December 2016), <https://www.irmi.com/articles/expert-commentary/construction-dispute-resolution>.

- October 13, 2017 Notice of a Public Hearing on Bill 22-395, Bill 22-439, and Bill 21-440 is published in the *District of Columbia Register*.
- November 1, 2017 The Committee of the Whole holds a public hearing on Bill 22-395, Bill 22-439, and Bill 21-397.
- February 6, 2018 The Committee of the Whole marks-up Bill 22-395.

III. POSITION OF THE EXECUTIVE

George Schutter, Chief Procurement Officer of the District of Columbia testified on behalf of the Executive at the Committee's public hearing on November 1, 2017. Mr. Schutter expressed broad support for the intent of all three underlying bills: to make solicitation more transparent, to ensure prompt payment to vendors and subcontractors, and to encourage resolution of disputes between contractors and subcontractors. However, he expressed concern with how each of the three underlying bills proposed to address the concerns, and welcomed the opportunity to work with the Council, the OCFO, and the business community to improve the procurement process for the vendor community.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no comments from Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 22-395 on Tuesday, November 10, 2015. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Elizabeth Anderson-Cadogan, CEO, Cadogan & Associates, testified in support of lowering quick payment deadlines, and stated that all three underlying bills give more power to small businesses.

Roscoe Grant, R. Grant Enterprises LLC, testified in support of all three underlying bills and stated that subcontractors in the District need more government support.

Calvin Reid, Washington Contractors Guild, Owner, Atlas Manufacturing Inc, testified in support of all three underlying bills and recommended additional transparency with regard to payment bonds.

Michael Smith, President and CEO, Smith and Sons, testified in support of the current laws regarding the issues underlying all three bills, and in support of the three bills that would strengthen those laws.

Deborah Harvey, Executive Director, Washington DC Chapter of the National Utility Contractors Association, testified in support of a more searchable solicitation website, in favor of prompt payment while recognizing lowering the 30 day threshold could create challenges, and in support of an expeditious procedure to resolve disputes and reduce litigation.

Evette Banfield, Vice President, Coalition for Nonprofit Housing and Economic Development, testified in support of strengthening quick payment provisions of the law and in favor of alternative dispute resolution contemplated in Bill 22-440.

Fred Hill, III, Gotta Go Now, LLC, testified in support of the three underlying bills

Ike Casey, Executive Committee, Alliance for Construction Excellence, testified in support of solicitation transparency in the underlying Bill 22-395.

Jefferey DeWitt, Chief Financial Officer, provided extensive testimony on the administration of invoicing and payments in the District. He also provided statistical data on current payment timeliness. Finally, he provided background on his experience with integrated procurement IT systems having previously been the lead procurement official for the City of Phoenix, Arizona.

George Schutter, Chief Procurement Officer, Office of Contracting and Procurement, testified on behalf of the Executive. His testimony is summarized in section III above.

The Committee also received the following written testimony:

Ericka Wadlington, Director of Public Policy & Programs, DC Chamber of Commerce, provided testimony supporting the underlying Bill 22-439 to reduce quick payment timelines.

VI. IMPACT ON EXISTING LAW

Bill 22-395 amends several sections of and adds a new section to the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*). The District of Columbia Government Quick Payment Act of 1984, effective March 15, 1985 (D.C. Law 5-164, D.C. Official Code § 2-221.01 *et seq.*) is amended to add a new common contract clause affecting dispute resolution.

VII. FISCAL IMPACT

The attached February 5, 2018 fiscal impact statement from the District's Chief Financial Officer (CFO) states that funds are not sufficient in the FY 2018 through FY 2023 budget and financial plan to implement Bill 22-395. Specifically, the CFO states invoicing and payment systems would cost \$XXX,000 in fiscal year 2018 and \$XXX,000 over the four-year financial plan period.

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of Bill 22-395.
<u>Section 2</u>	Requires a new common contract clause for dispute resolution.
<u>Section 3</u>	Requires all solicitations over \$100,000 to be procured through OCP's procurement system; requires a central website containing links to all solicitations at agencies independent of the CPO; and codifies the Executive's existing vendor payment portal webpage.
<u>Section 4</u>	States the applicability of portions of the bill subject to appropriation.
<u>Section 5</u>	Fiscal Impact Statement.
<u>Section 6</u>	Establishes the effective date by stating the standard 30-day Congressional review language.

IX. COMMITTEE ACTION

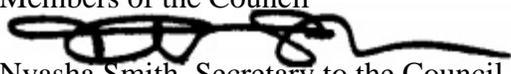
X. ATTACHMENTS

1. Bill 22-395 as introduced.
2. Bill 21-439 as introduced.
3. Bill 21-440 as introduced.
4. Written Testimony.
5. Fiscal Impact Statement for Bill 22-395.
6. Legal Sufficiency Determination for Bill 22-395.
7. Comparative Print for Bill 22-395.
8. Committee Print for Bill 22-395.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : July 12, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, July 11, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Accessible and Transparent Procurement Amendment Act of 2017", B22-0395

INTRODUCED BY: Councilmembers McDuffie, R. White, Silverman, Grosso, T. White, Nadeau, Allen, Bonds, and Cheh

CO-SPONSORED BY: Councilmembers Evans, Todd, and Gray

The Chairman is referring this legislation to the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services

1 Brianne Nadeau

2 Councilmember Brianne Nadeau

3 Kenyan R. McDuffie

4 Councilmember Kenyan R. McDuffie

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6 Charles Allen

7 Councilmember Charles Allen

8 Robert White

9 Councilmember Robert White

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13 Anita Bonds

14 Councilmember Anita Bonds

15 Elissa Silverman

16 Councilmember Elissa Silverman

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19 Mary Cheh

20 Councilmember Mary Cheh

21 David Grosso

22 Councilmember David Grosso

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25 Trayon White

26 Councilmember Trayon White

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30 A BILL

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35 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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40 To amend the Procurement Practices Reform Act of 2010 to require all District government
41 procurement solicitations and contracts to be published on one publicly accessible
42 internet site.

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44 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
45 act may be cited as the "Accessible and Transparent Procurement Amendment Act of 2017".

46 Sec. 2. The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C.
47 Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

48 (a) Section 101(b) (D.C. Official Code § 2-351.01(b)) is amended by adding a new
49 paragraph (3A) to read as follows:

50 “(3A) To provide a single, transparent, easily searchable site where contractors, and the
51 public, can view and respond to all opportunities available from the District government;”.

52 (b) A new section 101a is added to read as follows:

53 “Sec. 101a. Procurement opportunities; one site access.

54 “(a)(1) Within 120 days of the effective date of the Accessible and Transparent
55 Procurement Amendment Act of 2017, as introduced on July 11, 2017 (Bill 22-___), the Mayor
56 shall establish a single portal, platform-independent Internet site that provides machine-readable
57 and searchable information on all solicitations and contracts of \$25,000 or more, and related
58 laws, rules, and policies (“SCI website”), which shall be maintained by the OCP.

59 “(2)(A) Notwithstanding that the solicitation or contract information is on an
60 agency website or otherwise available, the SCI website shall serve as the primary source of
61 information on the goods, services, and construction items that the District government is
62 interested in procuring.

63 “(B) The Mayor shall require each agency not subject to the authority of the
64 CPO to transmit the information required by this section to the CPO, or other information the
65 CPO considers necessary or appropriate, for posting on the SCI website.

66 “(b)(1) The SCI website shall be designed so that solicitation and contract information is
67 easily understandable and accessible, with few or no barrier elements between the searcher and
68 the information and, as feasible, enable a search by:

- 69 “(A) Keyword;
- 70 “(B) Product;
- 71 “(C) Type of service or NAIC code;
- 72 “(D) Agency; or
- 73 “(E) Other method considered appropriate or desirable for accessibility.

74 “(2) The CPO may provide additional features on the SCI website, such as
75 optional registration that would offer time-saving advantages for a frequent searcher and allow
76 the searcher to create a saved list of contract opportunities; provided, that such registration is
77 free, or specific search options for opportunities that have been set aside for small, women-
78 owned, minority-owned, or veteran-owned businesses.

79 “(c) The CPO shall include on the SCI website:

80 “(1) Every District government procurement opportunity of \$25,000 or more,
81 regardless of whether the solicitation or contract is under the administrative authority of the OCP
82 or independent of the OCP;

83 “(2) The legal authority and rules that govern procurement for all agencies,
84 including those exempt from the authority of the CPO;

85 “(3) The names of all personnel with delegated contracting authority;

86 “(4) The names and addresses of the awarded contractors;

87 “(5) A copy of each contract and of any determination or finding, contract
88 modification, change order, solicitation, or amendment associated with the contract, including
89 those made by an agency exempt from the authority of the CPO; which information shall remain
90 available on the SCI website for the duration of the underlying contract or 5 years, whichever is
91 longer;

92 “(6) Notwithstanding section 105(c)(2), (3), (7), (9), (11), (13), (14), (15), (16),
93 (17), (18), and (19) and section 201(b), upon issuance, all solicitations in a uniform format; and

94 “(7) A listing of all solicitations issued within the preceding year with a closing
95 date of less than 30 days from the date the solicitation was issued.”.

96 (c) Section 204(b)(14) (D.C. Official Code § 2-352.04(b)(14)) is amended by striking the
97 phrase “transparent internet site,” and inserting the phrase “transparent, single portal, platform-
98 independent, searchable Internet site,” in its place.

99 Sec. 3. Fiscal impact statement.

100 The Council adopts the fiscal impact statement in the committee report as the fiscal
101 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
102 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

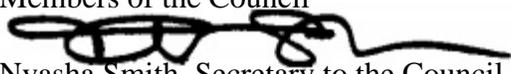
103 Sec. 4. Effective date.

104 This act shall take effect following approval by the Mayor (or in the event of veto by the
105 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
106 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
107 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
108 Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : September 21, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, September 19, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Quick Payment Amendment Act of 2017", B22-0439

INTRODUCED BY: Councilmembers McDuffie, Todd, Nadeau, Bonds, and R. White

CO-SPONSORED BY: Councilmembers Gray, Cheh, T. White, Evans, Allen, and Chairman Mendelson

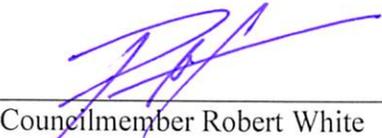
The Chairman is referring this legislation to the Committee of the Whole with comments from the Committee on Government Operations.

Attachment

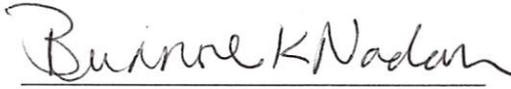
cc: General Counsel
Budget Director
Legislative Services

1 
2 Councilmember Anita Bonds


Councilmember Kenyan R. McDuffie

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7 Councilmember Robert White


8 Councilmember Brandon Todd

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12 Councilmember Brianne Nadeau

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15 A BILL

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20 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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25 To amend the District of Columbia Quick Payment Act of 1984 to decrease the number of days a
26 District agency has to make a payment to a business concern after receipt of a proper
27 invoice where a specific date has not established by contract and to decrease the number
28 of days that a District agency has to notify a business concern in writing of any defect in
29 the business concern's invoice or delivered goods, property, or services, or impropriety
30 that would affect the statutorily required payment date.

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32 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
33 act may be cited as the "Quick Payment Amendment Act of 2017".

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35 Sec. 2. Section 3(a)(2) of the District of Columbia Quick Payment Act of 1984, effective
36 March 15, 1985 (D.C. Law 5-164, D.C. Code § 2-221.02(a)(2)), is amended as follows:

37 (a) Subparagraph (A)(ii) is amended "by" striking the number "30" and inserting the
38 number "15" in its place.

39 (b) Subparagraph (D) is amended by striking the number "15" and inserting the number
40 "10" in its place.

41 Sec. 3. Fiscal impact statement.

42 The Council adopts the fiscal impact statement in the committee report as the fiscal
43 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
44 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

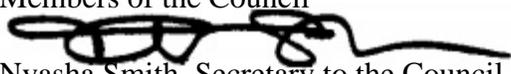
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49 24, 1973 (87 Stat. 788; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
50 Columbia Register.

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Memorandum

To : Members of the Council

From : 
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Date : September 21, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, September 19, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017", B22-0440

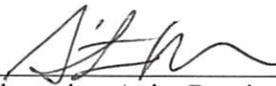
INTRODUCED BY: Councilmembers McDuffie, Todd, Nadeau, Bonds, and R. White

CO-SPONSORED BY: Councilmembers Grosso and Cheh

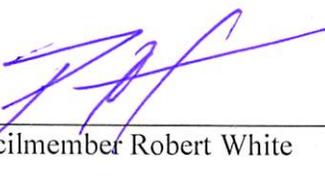
The Chairman is referring this legislation to the Committee of the Whole.

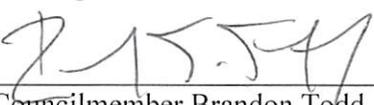
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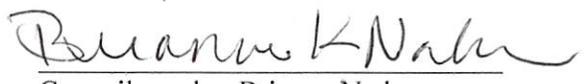
cc: General Counsel
Budget Director
Legislative Services

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3 Councilmember Anita Bonds


Councilmember Kenyan R. McDuffie

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6 Councilmember Robert White


7 Councilmember Brandon Todd

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11 Councilmember Brianne Nadeau

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17 A BILL

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22 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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27 To amend the District of Columbia Quick Payment Act of 1984 to establish an expeditious
28 procedure for resolving disputes between contractors and subcontractors.

29
30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
31 act may be cited as the "Government Contractor-Subcontractor Dispute Resolution Amendment
32 Act of 2017".

33
34 Sec. 2. Section 5 of the District of Columbia Quick Payment Act of 1984, effective
35 March 15, 1985 (D.C. Law 5-164, D.C. Code § 2-221.04), is amended by adding new
36 subsections (e) through (k) to read as follows:

37 "(e) Whenever the Director is notified of a dispute between a contractor and a
38 subcontractor of a government contract, the Director shall be authorized to resolve the matter
39 through conference and conciliation or investigate and issue findings and impose fines.

40 “(f)(1) A District agency, prime contractor, or subcontractor claiming to be
41 aggrieved may request the Director to initiate an investigation by submitting a written complaint
42 setting forth the alleged violations.

43 “(2) If the investigation establishes that a clause of the prime or
44 subsequent contract has been materially breached and the Director determines the matter cannot
45 be resolved through conference and conciliation, the Director shall promptly notify all parties
46 and appoint a neutral hearing officer.

47 “(g)(1) Hearing officers shall be appointed from an established pool of District
48 agency-trained hearing officers.

49 “(2) Within 5 business days an entity named in the counts and allegations
50 may object to the hearing officer assigned to the dispute resolution for good cause shown and the
51 Director may appoint a new hearing officer.

52 “(3) Upon the appointment of a hearing officer, the Director shall notify
53 all parties of the appointment and supply each party and the hearing officer with the counts and
54 allegations of the disputed matter within 10 business days of the hearing officer’s appointment.

55 “(4) Within 10 business days after the counts and allegations are
56 distributed, parties to the matter shall submit any written requests for material changes directly to
57 the hearing officer.

58

59 “(5) Within 15 days of appointment, the hearing officer shall notify the
60 Director and each individual person or business concern named in the counts and allegations of
61 the scheduled hearing date. The hearing date shall be set at the hearing officer’s sole discretion;
62 except, that the hearing must commence within 120 days of the date the Director served the

63 counts and allegations. The hearing officer may extend the 120-day period only upon good cause
64 shown.

65 “(h)(1) The hearing officer may, in his or her sole discretion, direct the persons or
66 business concerns named in the counts and allegations and the Director to submit in advance of
67 the hearing:

68 “(A) Statements;

69 “(B) Legal analyses;

70 “(C) Lists of witnesses;

71 “(D) Exhibits;

72 “(E) Documents; or

73 “(F) Any other information the hearing officer considers pertinent

74 to the determination of the disputed matter.

75 “(2) The hearing officer may request the respective parties to submit
76 rebuttals to the submitted information. The hearing officer may limit the length, scope, or content
77 of any:

78 “(A) Statement;

79 “(B) Analysis;

80 “(C) List;

81 “(D) Rebuttal;

82 “(E) Document; or

83 “(F) Other requested information.

84 “(3) The hearing officer shall set firm due dates for all written presentations.

85 “(i) If the hearing officer determines with the written agreement of each
86 individual person or business concern named in the counts and allegations and that of the
87 Director, that the hearing shall be by written presentation, all final writings shall be due no later
88 than 45 days of the date the Director served the counts and allegations, unless the hearing officer
89 extends the 45-day period only upon good cause shown.

90 “(j) The hearing officer shall consider the evidence submitted by the Director and
91 the persons or business concerns named in the counts and allegations. Within 15 days of the
92 hearing, or of the date final written presentations are due, the hearing officer shall issue his or her
93 findings and recommendations. The hearing officer shall serve the findings and
94 recommendations on the Director, the persons or business concerns named in the counts and
95 allegations or their respective counsel or authorized representatives and to any other entity
96 considered appropriate.

97 “(k) Discovery pursuant to District of Columbia Official Code of Civil Procedure
98 shall not be applicable to the administrative proceeding set forth in subsection (e) through (j) of
99 this subsection.”.

100 Sec. 3. Fiscal impact statement.

101 The Council adopts the fiscal impact statement in the committee report as the fiscal
102 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
103 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

104 Sec. 4. Effective date.

105 This act shall take effect following approval by the Mayor (or in the event of veto by the
106 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
107 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December

108 24, 1973 (87 Stat. 788; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of

109 Columbia Register.

PUBLIC HEARING

ON

Bill 22-439, "Quick Pay Amendment Act of 2017"

**Committee of the Whole
Council of the District of Columbia
Chairman Phil Mendelson**

**November 1, 2017, 10:00 a.m.
John A. Wilson Building
Room 412**



**Testimony of
Jeffrey S. DeWitt
Chief Financial Officer
Government of the District of Columbia**

Good morning, Chairman Mendelson, and members of the Committee of the Whole. My name is Jeffrey S. DeWitt and I am the Chief Financial Officer for the District of Columbia. I am here today to testify on Bill 22-439, the “Quick Pay Amendment Act of 2017.” With me here today is Cyril Byron, Associate CFO for the Economic Development and Regulation Cluster.

Efficiency in payment operations, which includes the timely and accurate payment of vendors should be one of government’s highest priorities. Indeed, over the past three years, there has been a concerted effort between agency program staff and OCFO staff to pay vendors within 30 days of receipt of a valid invoice, as required under the Quick Payment Act (QPA). Between FY 2015 and FY 2017, the District processed approximately 376,000 vendor payments, totaling an estimated \$12.3 billion. During this period, 93 percent of the payments, or \$11.8 billion, were processed in compliance with the Quick Payment Act, as reflected in Table 1 attached to my testimony.

The processing of a vendor payment or invoice in the District’s Procurement Automated Support System, or “PASS,” is based on a three-way match consisting of (1) a valid purchase order from a D.C. government agency; (2) confirmation in PASS, reflected in a “receiving report,” that goods and services have been received;

and (3) a valid invoice from the vendor that provided the goods or services.

The vendor payment process requires close coordination of multiple teams within the District as shown in the payment flow chart of Table 2 attached to my testimony.

Under the current payment process, vendors are required to submit their invoices to an Accounts Payable (AP) unit in one of seven OCFO clusters based on the agency that received the goods or services. The relevant AP unit then forwards the invoice to agency program staff to verify that the goods or services have been received, and to certify receipt, with a “receiving report,” in PASS. Processing a “receiving report” is the final step required of an agency to authorize payment.

Once the receiving report has been completed in PASS, the AP unit then has to process a voucher and have the voucher approved for payment. The approved voucher is automatically transmitted in the District’s System of Accounting and Reporting, or “SOAR,” to the Office of Finance and Treasury (OFT). OFT then issues the payment, either by check, wire or Automated Clearing House (ACH).

The payment of an invoice may seem like a simple concept, but it is an intricate process that requires many reviews and verifications along the way that are

fundamental to internal controls to prevent fraud, waste, and abuse. Any step in the process not properly executed can cause delay. When a vendor fails to submit a valid invoice, program and OCFO staff must spend time in communication with the vendor to correct the issue. District agencies have been advised to return an invoice to a vendor if issues cannot be resolved within a couple of days. The 30-day period begins again when a proper invoice is submitted. Payments can also be delayed when a vendor's banking or other information is incorrect or if the vendor submits the invoice to an address other than the one noted in the original purchase order.

Payment delays can also result internally due to an agency's failure to provide the receiving report in PASS or delays of review within the OCFO. These delays are largely the result of our current inability to accurately track the progress of an invoice, as the process is currently a manual one.

In an effort to continuously improve, last year the OCFO partnered with the Office of the Chief Technology Officer (OCTO) to develop an online vendor portal that includes a module to allow vendors to submit their invoices electronically through "e-invoicing," and a module to review all payments processed during the course of the fiscal year. The e-invoicing module is still in development awaiting funding to start Phase II of the pilot project. The module in which vendors can view payments

on-line, however, is currently up and running using the vendor portal. While a password and registration will be required to submit vendor invoices electronically, no password is needed to view the payment report.

This electronic vendor payment system will not only accelerate the payment process, because vendors will be able to submit invoices electronically instead of by hard-copy mail, but it will provide greater transparency and accountability to our internal payment processes. With the implementation of e-invoicing, we will be able to completely track the status of an invoice and see how long it takes to complete each stage of the payment process. This will not only ensure that the District pays all vendors within the required 30 days, but with specific performance targets for each process stage, will provide the tools and opportunity to consistently pay vendors in less than the current 30-day statutory requirement.

Given the complexity of the District's payment process, which currently requires manual reviews and approvals, legislation reducing the Quick Payment Act period from thirty to fifteen days establishes a threshold that will be extremely difficult, if not impossible, to meet. With this proposed change, the manual reviews and approvals required to process a payment will likely result in a large volume of payments failing to meet the fifteen-day requirement, which would result in

significantly more interest paid by the consumer agency. Or, agencies, in an effort to minimize the impact to their budgets, could sacrifice complete and thorough review for the sake of speed, and violate necessary internal controls. Both would be inconsistent with the intent of the legislation and would not serve the best interest of the District.

Given the realities of our current manual process, meeting the 15-day goal will require an extensive investment in a new procurement system and additional staffing, with the likelihood that interest penalties will still occur, impacting agency budgets. As a result, this legislation will likely have a substantial fiscal impact. By funding the implementation of e-invoicing using our existing system, greater accountability and transparency will be achieved, the status of invoices can be tracked, vendors and subcontractors can monitor payments, and oversight of the entire process can occur. These changes alone will likely result in substantial improvement in the payment process without a legal mandate that may prove both difficult and costly.

Chairman Mendelson and members of the Committee, this concludes my testimony. I am prepared to address any questions that you may have.

TABLE 1

Table 1: District of Columbia Fiscal Years 2015 - 2017 Quick Payment Act Compliance

Fiscal Year	Total Invoices Paid		Paid within 30 days		Compliance	
	Count	\$ Amount	Count	\$ Amount	Count	Percentage
2015	125,242	\$ 3,883,675,433	115,843	3,730,966,605	92%	
2016	125,179	\$ 4,149,199,004	116,126	3,960,462,715	93%	
2017	125,990	\$ 4,246,769,190	119,017	4,070,278,968	94%	
	376,411	\$ 12,279,643,627	350,986	11,761,708,287	93%	

Government of the District of Columbia
Office of Contracting and Procurement



Testimony of
George Schutter
Chief Procurement Officer

Public Hearing On

Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of
2017,”

Bill 22-440, the “Government Contractor-Subcontractor Dispute Resolution
Amendment Act of 2017,” and

Bill 22-439, the “Quick Payment Amendment Act of 2017”

Before the
Committee of the Whole
Council of the District of Columbia
The Honorable Phil Mendelson, Chairperson

John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Wednesday, November 1, 2017
10:00 A.M.

Good morning, Chairman Mendelson and members of the Committee of the Whole. I am George Schutter, and today I will offer testimony on Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2017,” Bill 22-440, the “Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017,” and Bill 22-439, the “Quick Payment Amendment Act of 2017.”

The Executive supports the spirit and intent of Bill 22-395, the “Accessible and Transparent Procurement Amendment Act of 2017.” Most of the provisions in this bill are transparency efforts that OCP and agencies with independent authority are working toward. In fact, in the Fiscal Year 2018 budget, the Mayor allocated capital funds to enhance the Procurement Automated Support System (PASS) to accomplish much of what this bill requires. Therefore, while we do agree with the overall intent, we do have concerns with several provisions of this bill and their operational impact.

First, the bill lowers the threshold for publicly posting solicitations from \$100,000 to \$25,000. This change will create additional process that will negatively impact our procurement service delivery timelines. Currently, there is no requirement for public notice of solicitations valued under the small purchase threshold of \$100,000. This gives the contracting officer flexibility to achieve competition in a streamlined manner so that these small purchases can be completed as quickly and efficiently as possible. If we were required to publicly notice purchases of \$25,000 or greater, it would impede our flexibility and lead to a longer procurement process and required lead time. A change in this area could potentially make it more difficult to award a contract when a program agency has an immediate need.

We also have concerns around the implementation timeline. The proposed 120 days is not enough time to implement a change of this magnitude, not just in OCP, but in agencies with independent authority and those agencies that are not using PASS. We are in the early phases of enhancing our system capabilities to accommodate increased transparency and reporting. We will have to conduct a comprehensive assessment to ensure that all of the bill's requirements are achievable within the constraints of PASS. For example, the search functionalities outlined in this bill are not standard in our system and will likely require customization that will take well beyond 120 days. In addition to the technical requirements, there will have to be significant coordination between OCP and agencies with independent contracting authority and each agency that is not currently using PASS. In collaboration with these agencies, we will have to determine from a technical and process perspective, how to implement these requirements without creating delays in posting time-sensitive solicitations and ensure that the information is kept up to date.

Since becoming Chief Procurement Officer in 2015, I have consistently advocated for and actively worked toward transparency in contracting and procurement in the District. I believe it is important for not only the business community, but also District residents to see how taxpayer dollars are spent. We look forward to working with the Council to refine the specific requirements of this bill.

Next, I will turn to Bill 22-440, the "Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017." In general, we support the idea that subcontractors should be paid in a timely manner, however, we don't believe that Bill 22-440 will accomplish that goal.

The bill adds a layered and cumbersome process to an already challenging process for some subcontractors to navigate. The proposed process adds an additional six months to resolve a

dispute for payments. Additional time added to a process that some subcontractors already believe takes too long, could be detrimental to the District and the small businesses that would be directly impacted by a six-month delay in payment.

We believe that this bill, in its current form, will expose the District to a huge risk by establishing a relationship between the District and subcontractors, where one does not currently exist. According to the Quick Payment Act, a prime contractor and subcontractor cannot name the District as a party in a dispute. The bill, as written, does not repeal that section of the Quick Payment Act, ultimately contradicting its intended purpose.

The District, like many other jurisdictions, the federal government, and private industry, does not have privity of contract with subcontractors, meaning that the subcontractor's relationship is directly with the prime contractor. Inserting the District in a dispute between a prime and subcontractor based on a contract that we did not negotiate, and to which the District is not a party, adds another layer of complexity to the contracting process.

As written, the bill also removes some of the contracting officer's responsibility and latitude to administer contracts and may interfere with the role of the Contract Appeals Board to review and hear contract disputes. A concern is that this bill creates an additional role for the hearing officer and does not consistently reconcile the roles of the Contract Appeals Board, the hearing officer, and the contracting officer, specifically with regard to disputes between the prime contractor and subcontractor.

We recognize that the goal of this bill is to ensure on-time payment for timely delivery of goods and services. In our existing rules, regulations, and practice, the subcontractor has recourse in the event they are not being paid in a timely manner, including:

- In our standard contract terms and conditions, we clearly outline the prime contractor's responsibility to pay their subcontractors within seven days of receiving payment from the District. If the prime contractor fails to do so, the prime company is in breach of its contract with the District and is subject to a cure notice or a negative performance evaluation. If a subcontractor is having challenges getting paid, it should act in accordance with the terms of its contract with the prime, which should stipulate the steps the subcontractor takes in the event of nonpayment or any other dispute. While a subcontractor may contact the contracting officer, he or she will investigate the matter only insofar as the issue affects the District's contract with the prime.
- The Procurement Integrity, Transparency, Accountability Amendment Act of 2015 required OCP to have an Ombudsman. Part of the Ombudsman's role is to help resolve matters involving disputes between the prime and subcontractors, which can include payment. OCP is in the final stages of the hiring process for this position and plans to make a formal announcement in the coming weeks.

I welcome the opportunity to continue working with the Council, the business community, and the OCFO to streamline the process of paying contractors in a timely manner.

Finally, I would like to briefly discuss some concerns regarding Bill 22-439, the "Quick Payment Amendment Act of 2017." This measure would decrease the number of days the District has to make payment from 30 to 15 days. Although well intentioned, this measure does not conform to industry standards and would create serious challenges for District agencies.

In most other jurisdictions, including the federal government, 30 days is the standard. While it is possible to turnaround payments in less than 30 days, it is contingent on the type of goods, services, or construction that is being delivered. Contracts with more technical scopes require

more time and effort to determine if the work is satisfactorily completed before a contract administrator certifies receipt of the goods or services so that the OCFO can process the invoice for payment. Based on data from contracts awarded by the Department of General Services in fiscal year 2017, it required an average of 13 days to review, approve, and submit payment data to OCFO. It requires another 12 days for OCFO to conduct their review and approval and five days to issue payment. Our concern is that anything shorter than 30 days will impede District agencies' ability to perform proper due diligence and ensure goods, services, and construction are rendered according to the terms and conditions of the contract. As stewards of taxpayer dollars, we do not want to sacrifice quality, integrity, and accuracy of the goods, services, and construction we procure for speedier payment. The Executive will continue to drive operations toward timely and transparent payment.

I appreciate the opportunity to testify on Bill 22-395, "Accessible and Transparent Procurement Amendment Act of 2017," Bill 22-440, the "Government Contractor-Subcontractor Dispute Resolution Amendment Act of 2017," and Bill 22-439, the "Quick Payment Amendment Act of 2017." This concludes my prepared testimony, and I am happy to answer any questions you may have.



Submitted Testimony of Erika Wadlington
Director of Public Policy & Programs, DC Chamber of Commerce
Before the Committee of the Whole on Wednesday, November 1, 2017

on

Bill 22-439, Quick Payment Amendment Act of 2017

Good Morning Chairman Mendelson and members of the Committee of the Whole. I am Erika Wadlington, Director of Public Policy & Programs at the DC Chamber. On behalf of the member-companies of the Chamber, the nearly hundreds of thousands of individuals they employ, and the millions of dollars in District tax revenue they provide yearly to the District's coffers, I am submitting to you this testimony to share with you comments regarding the Bill 22-439, Quick Payment Amendment Act of 2017.

Many of our members who do business with the District, have over the years, raised concerns about receiving timely payment even though there exists a Quick Payment Act. As a chamber of commerce that supports advocating for business-friendly policies, it is essential we highlight to you today the concerns of the business community, and support the Committee of the Whole as it seeks to ensure prompt payment is delivered to those private sector contractors who provide goods and services to the District government.

As you may know, the DC Chamber of Commerce, much like the Committee and the Mayor, supports a procurement process that is efficient, and fair to all businesses that qualify and wish to participate in these opportunities. For us, when the District has a competitive procurement process that concludes with a timely payment after services are rendered and the appropriate financial information is transmitted, it is significant for businesses. Our members, like all businesses, need to be paid on time. It is part of the DC Chamber's policy goals to work to secure better performance from the District and, specifically, to see laws like the DC Quick Payment Act enforced and enhanced to ensure local vendors are receiving payment as soon as possible. As such we support B22-439.

The government of the District of Columbia awards over \$500 million dollars in contracts to certified firms, and remitting money quickly would help those companies through tough times and with cash flow. Small business cashflow depends on prompt payment. Our members have expressed on several occasions, even with the current quick payment act, that payment from the District takes time and in some scenarios, can take more than 90 days to receive. Bill 22-439 is a step towards ensuring payment is made twice as fast. This will put more money in the pockets of small businesses quicker, which means they can hire employees and residents quicker and contribute to the local economy.

The District of Columbia is not the only jurisdiction with a quick payment policy. Other jurisdictions have established prompt payment timelines that are less than the District's current requirements. Most notably several states have statutes that require payment within 15 days after receipt of invoice. A brief scan of other jurisdictions has illustrated that Arizona, Arkansas, Georgia and Hawaii are among those jurisdictions. Over five years ago, the President's Office of Management and Budget (OMB) implemented a policy to require federal agencies to pay prime contractors as soon as possible with the goal of paying within 15 days of receiving a proper invoice. Even in the private sector, several businesses are switching to a Net-15 day payment periods following the leadership of the previously mentioned OMB policy and the changing business environment. Most small businesses do it now and expectations are changing. We strongly encourage the Council of the District of Columbia to follow those policies and pass legislation requiring government to pay its contractors as soon as possible. As such, the DC Chamber of Commerce encourages the Council to consider favorably and pass Bill 22-439, Quick Payment Amendment Act of 2017.

District of Columbia Quick Payment Act of 1984
DC CODE, TITLE 2, CHAPTER II
CHAPTERS SUBCHAPTER XI. QUICK PAYMENT PROVISIONS.

§ 2-221.02. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.

* * *

(d) Any contract awarded by a District agency shall include:

(1) A payment clause that obligates the contractor to take one of the 2 following actions within 7 days of receipt of any amount paid to the contractor by the District agency for work performed by any subcontractor under a contract:

(A) Pay the subcontractor for the proportionate share of the total payment received from the District agency that is attributable to the subcontractor for work performed under the contract; or

(B) Notify the District agency and the subcontractor, in writing, of the contractor's intention to withhold all or part of the subcontractor's payment with the reason for the nonpayment;

(2) An interest clause that obligates the contractor to pay interest to the subcontractor or supplier as provided in subsection (b)(1) and (2) of this section; and

(3) A clause that obligates the contractor to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of this subsection in a contract with any lower-tier subcontractor or supplier.

(4) A change order clause that:

(A) Prohibits the District or a prime contractor from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the contracting officer:

(i) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;

(ii) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;

(iii) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the contracting officer; and

(iv) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

(B) Requires a prime contractor to include in its subcontracts a clause that requires the prime contractor to:

(i) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;

(ii) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and

(iii) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the contracting officer; and

(C) Prohibits the District, a prime contractor, or a subcontractor from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work.

(5) A dispute-resolution clause that obligates the contractor to include in any subcontract a provision that would require the contractor, at the election of the subcontractor, to participate in negotiation, mediation, or arbitration as an alternative to administrative or judicial resolution of a dispute.

PROCUREMENT PRACTICES REFORM ACT OF 2010
DC CODE, TITLE 2, CHAPTER 3A
TITLE IV. SOURCE SELECTION AND CONTRACT FORMATION

§ 2-354.01. Source selection methods.

(a)(1) Except as otherwise authorized by law, all District government contracts shall be awarded by:

- (A) Competitive sealed bidding pursuant to § 2-354.02;
- (B) Competitive sealed proposals pursuant to § 2-354.03;
- (C) Sole source procurements pursuant to § 2-354.04;
- (D) Emergency procurements pursuant to § 2-354.05;
- (E) Human care procurements pursuant to § 2-354.06;
- (F) Small purchase procurements pursuant to § 2-354.07;
- (G) Special pilot procurements pursuant to § 2-354.08;
- (H) Reverse auctions pursuant to § 2-354.09;
- (I) Procurements through a General Services Administration schedule pursuant to § 2-354.10;
- (J) Cooperative agreements pursuant to § 2-354.11;
- (K) Procurements through the DCSS pursuant to § 2-354.12; or
- (L) Infrastructure facilities and services pursuant to subchapter VI of this chapter.

(2) The CPO shall publish annually on the Internet a report on the number of and dollar value of contracts executed under each source selection method.

(b) Repealed.

(c) To the maximum extent practicable, each District government agency subject to the provisions of this act pursuant to section 105(a) shall solicit each contract in an amount in excess of \$100,000, not including contracts for goods or services obtained pursuant to the District of Columbia Supply Schedule, through the electronic procurement system operated and maintained by the Chief Procurement Officer pursuant to section 204(b)(9).

* * *

§ 2-361.04. Transparency in contracting.

(a) The CPO shall establish and maintain on the Internet a website containing publicly available information regarding District procurement.

(b) The website established pursuant to subsection (a) of this section shall contain, at a minimum, the following:

(1) Information regarding the statutes and rules that govern procurement for all District agencies, including those exempt from the authority of the CPO.

~~(2) Links to the contract solicitation websites of OCP and all District agencies exempt from the authority of the CPO.~~

(2)(A) A webpage with links to each District government website containing active solicitations for goods or services in an amount in excess of \$100,000, including websites maintained by District agencies exempt from the authority of the CPO.

(B) Each website linked to by the webpage in subparagraph (A) of this paragraph shall provide clear instructions on how to respond electronically to each solicitation, unless a solicitation cannot be responded to electronically, in which case the website shall provide clear instructions on how to respond to the solicitation through non-electronic means.

(3) A database containing information regarding each contract executed by the District for an amount equal to or greater than \$100,000, including each such contract made by a District agency exempt from the authority of the CPO pursuant to § 2-351.05. For each contract contained in the database, the database shall include a unique identifier and, at a minimum, the following:

(A) A copy of the executed contract;

(B) All determinations and findings related to the contract;

(C) All contract modifications, change orders, or amendments associated with the contract;

(D) All solicitation documents for the contract, including all requests for proposals and invitations for bids, and any amendments of such documents; and

(E) The contract summary documents for the contract that are submitted to the Council for its review.

(4) Placeholders identifying any portions of the items set forth in paragraph (3) of this subsection withheld as confidential by the CPO pursuant to § 2-354.17.

(5) A list of each contract executed by the District for an amount less than \$100,000, which shall include, for each contract, the vendor name, a description of the goods or services purchased, and the dollar amount of the contract.

~~(6)(A) A list of each payment made by the District to a prime contractor, including the date and the dollar amount of the payment. The list shall be updated not less than once each week.~~

~~(B) Payments not administered through the Procurement Automated Support System shall be exempt from the requirement of subparagraph (A) of this paragraph.~~

(c) Agencies not subject to the authority of the CPO shall transmit the information required by this section to the CPO for posting on the Internet.

§ 2-361.04a Vendor Portal.

(a) The Mayor shall establish and maintain on the Internet a publicly accessible website containing a portal which shall, at a minimum:

(1) Show payments made by the District of Columbia Government to contractors, searchable by purchase order number, invoice number, check number, voucher number, or any combination of the aforementioned necessary to identify a particular payment;

(2) Allow for electronic submission of invoices to the District by a contractor;
and

(3) Allow for electronic payment of invoices to a contractor by the District.”

(b) The website may require registration to view payments to contractors shown pursuant to subsection (a)(1) of this section, but such registration shall not require the viewer to supply any identifying information except for his or her name, email address, and password.

(c) This section shall apply to payments made by, and invoices submitted to, any agency that manages financial transactions through systems maintained by the Chief Financial Officer.

1 **DRAFT COMMITTEE PRINT**
2 **Committee of the Whole**
3 **February 6, 2018**
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8 A BILL
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11 22-395
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14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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21 To amend the District of Columbia Government Quick Payment Act of 1984 to require that any
22 contract awarded by a District agency include a standard contract clause obligating the
23 contractor to include a dispute-resolution clause in any contract that it enters into with a
24 subcontractor; and to amend the Procurement Practices Reform Act of 2010 to require that
25 certain District government contracts be solicited through the electronic procurement
26 system operated and maintained by the Chief Procurement Officer, to require that certain
27 District government procurement solicitations be linked to via a single publicly accessible
28 internet webpage, and to require the Mayor to maintain a publicly available website that
29 provides information regarding payments made to contractors by agencies that manage
30 financial transactions through systems maintained by the Chief Financial Officer and
31 allows for electronic invoicing of, and payment of invoices by, such agencies.
32

33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
34 act may be cited as the “Accessible and Transparent Procurement Amendment Act of 2018”.

35 Sec. 2. Section 3(d) of the District of Columbia Government Quick Payment Act of
36 1984, effective March 15, 1985 (D.C. Law 5-164, D.C. Official Code § 2-221.02(d)), is amended
37 by adding a new paragraph (5) to read as follows:

38 “(5) A dispute-resolution clause that obligates the contractor to include in any
39 subcontract a provision that would require the contractor, at the election of the subcontractor, to

40 participate in negotiation, mediation, or arbitration as an alternative to administrative or judicial
41 resolution of a dispute.”

42 Sec. 3. The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C.
43 Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

44 (a) Section 401 (D.C. Official Code § 2-354.01) is amended by adding a new subsection
45 (c) to read as follows:

46 “(c) To the maximum extent practicable, each District government agency subject to the
47 provisions of this act pursuant to section 105(a) shall solicit each contract in an amount in excess
48 of \$100,000, not including contracts for goods or services obtained pursuant to the District of
49 Columbia Supply Schedule, through the electronic procurement system operated and maintained
50 by the Chief Procurement Officer pursuant to section 204(b)(9).”

51 (b) Section 1104(b) (D.C. Official Code § 2-361.04(b)(2)) is amended as follows:

52 (1) Paragraph (2) is amended to read as follows:

53 “(2)(A) A webpage with links to each District government website containing
54 active solicitations for goods or services in an amount in excess of \$100,000, including websites
55 maintained by District agencies exempt from the authority of the CPO.

56 “(B) Each website linked to by the webpage in subparagraph (A) of this
57 paragraph shall provide clear instructions on how to respond electronically to each solicitation,
58 unless a solicitation cannot be responded to electronically, in which case the website shall
59 provide clear instructions on how to respond to the solicitation through non-electronic means.”

60 (2) Paragraph (6) is repealed.

61 (c) A new section 1104a is added to read as follows:

62 “Sec. 1104a. Vendor Portal.

63 “(a) The Mayor shall establish and maintain on the Internet a publicly accessible website

64 containing a portal which shall, at a minimum:

65 “(1) Show payments made by the District of Columbia Government to
66 contractors, searchable by purchase order number, invoice number, check number, voucher
67 number, or any combination of the aforementioned necessary to identify a particular payment;

68 “(2) Allow for electronic submission of invoices to the District by a contractor;
69 and

70 “(3) Allow for electronic payment of invoices to a contractor by the District.”

71 “(b) The website may require registration to view payments to contractors shown
72 pursuant to subsection (a)(1) of this section, but such registration shall not require the viewer to
73 supply any identifying information except for his or her name, email address, and password.

74 “(c) This section shall apply to payments made by, and invoices submitted to, any agency
75 that manages financial transactions through systems maintained by the Chief Financial Officer.”

76 Sec. 4. Applicability.

77 (a)(1) Each portion of this act specified in subsection (b) of this section shall apply upon
78 the date of inclusion of its fiscal effect in an approved budget and financial plan.

79 (2) The Chief Financial Officer shall certify the date of the inclusion of the fiscal
80 effect in an approved budget and financial plan, and provide notice to the Budget Director of the
81 Council of the certification.

82 (3)(A) The Budget Director shall cause the notice of the certification to be
83 published in the District of Columbia Register.

84 (B) The date of publication of the notice of the certification shall not
85 affect the applicability of the portions of this act specified in subsection (b) of this section.

86 (b)(1) In section 3, new section 1104a(a)(2) of the Procurement Practices Reform Act of
87 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), as

88 added by this act.

89 (2) In section 3, new section 1104a(a)(3) of the Procurement Practices Reform
90 Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*),
91 as added by this act.

92 Sec. 5. Fiscal impact statement.

93 The Council adopts the fiscal impact statement in the committee report as the fiscal
94 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
95 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

96 Sec. 6. Effective date.

97 This act shall take effect following approval by the Mayor (or in the event of veto by the
98 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
99 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
100 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
101 Columbia Register.