

**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: November 13, 2018

SUBJECT: Report on Bill 22-911, the “Office of Public-Private Partnerships Delegation of Authority Amendment Act of 2018”

The Committee of the Whole, to which Bill 22-911, the “Office of Public-Private Partnerships Delegation and Council Review 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 10, 2018, Bill 22-911, the “Office of Public-Private Partnerships Delegation of Authority Amendment Act of 2018”² was introduced by Chairman Mendelson and cosponsored by Councilmember McDuffie. As introduced, Bill 22-911 would amend the Procurement Practices Reform Act of 2010³ (PPRA) and the Office of Public-Private Partnerships Act of 2014⁴ (P3 Act) to allow the Office of Public-Private Partnerships (OP3) to delegate its contracting authority for public-private partnership agreements to the Office of Contracting and Procurement (OCP), and to require any employee of the OCP exercising such delegated authority to comply with provisions of the P3 Act and any regulations promulgated to effectuate it; to amend the P3 Act to require submission to the Council of the core elements of a proposed request for proposals and to require active approval by the Council of such requests for proposals. As revised by the Committee, the bill only addresses the delegation of OP3 contracting authority to OCP.

¹ Introduced as the “Office of Public-Private Partnerships Delegation and Council Review Amendment Act of 2018.”

² *Id.*

³ D.C. OFFICIAL CODE § 2-351.01 *et seq.* (2018). [hereinafter PPRA]

⁴ D.C. OFFICIAL CODE § 2-271.01 *et seq.* (2018). [hereinafter P3 Act]

The P3 Act was adopted to encourage and facilitate the development, solicitation, evaluation, award, delivery, and oversight of public-private partnership (P3) agreements. The P3 Act exempts public-private partnerships from the PPRA to streamline the procurement process and allow for the additional flexibility inherent in many P3 projects. Importantly, the P3 Act does not exempt P3 contracts from Council review as required under Section 451 of the Home Rule Act for multiyear contracts, or contracts over \$1 million.⁵

OP3 was established in November 2015. To date, three years later, the Council has yet to receive an RFP for its review. According to OP3's website, there is a streetlight P3 project currently underway as a P3 solicitation. A request for information to begin that process was issued in January 2017 – two years ago.⁶ In addition, there are currently two unsolicited proposals that received a favorable review and are undergoing the unsolicited proposal process, which does not require Council review – for information kiosks⁷ and rehabilitation of the Daly Building.⁸

Delegation of Contracting Authority

Under the PPRA, the Chief Procurement Officer (CPO) has broad authority over procurements in the District under the policies of the PPRA. Several agencies and functions are either exempt from the CPO's authority, from the PPRA, or both. However, the PPRA specifies that the CPO may conduct procurements on behalf of exempt agencies, provided the CPO follow the PPRA requirements.⁹ Since OP3 was fully stood up in 2016, OP3 has entered into an agreement with the CPO to utilize the expertise of certain OCP staff to assist OP3 with its procurements. However, under the law, those staff cannot follow the P3 Act because they are required to follow PPRA,¹⁰ even though OP3 is exempt from the PPRA.

This issue was brought to the Committee's attention in May 2018. Bill 22-911 includes a provision to explicitly allow OP3 to delegate authority to OCP for soliciting and awarding P3 projects, as well as to explicitly allow OCP staff who are delegated that authority to carry out functions under the P3 Act and regulations. The Council adopted emergency¹¹ and temporary¹² legislation in July 2018 to allow the delegation of authority immediately. The Committee Print effectuates the delegation of authority on a permanent basis.

P3 Solicitations and Council Review of RFPs

Under the framework established under the P3 Act and its implementing regulations, OP3 may issue solicitations for P3 projects, or may accept unsolicited proposals. With an unsolicited proposal, and offeror can submit a proposal to OP3 and OP3 can evaluate the proposal to see if it something the District may be interested in. If the proposal is evaluated favorably as a project the District may want to move forward with, OP3 must then issue a Request for Alternative Proposals

⁵ District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 744 (1973), D.C. OFFICIAL CODE § 1-204.51.

⁶ OP3, *Street Light Modernization*, Project Pipeline, (October 18, 2018), <https://op3.dc.gov/node/1195519>.

⁷ OP3, *Digital Kiosks*, Project Pipeline, (October 18, 2018), <https://op3.dc.gov/node/1311926>

⁸ OP3, *Henry J. Daly Building*, Project Pipeline, (October 18, 2018), <https://op3.dc.gov/node/1195520>.

⁹ PPRA, *supra* note 3 at § 2-352.01(f).

¹⁰ PPRA, *supra* note 3 at § 2-352.01(f).

¹¹ D.C. Act 22-435, Office of Public-Private Partnerships Delegation of Authority Emergency Amendment Act of 2018.

¹² D.C. Act 22-469, Office of Public-Private Partnerships Delegation of Authority Temporary Amendment Act of 2018.

(RFAP) to allow other offerors to bid on the concept. An unsolicited proposal request requires no Council approval – however the Council would still need to approve any eventual contract if it met the criteria.¹³

With a solicited proposal, OP3 develops a Request for Proposals (RFP) based on an identified District need and must get Council approval of the RFP before it goes out for bid. Under current law, an RFP that for a project anticipated to be over \$50 million or for a period of more than 10 years must come to the Council for 45-day “passive review” meaning that if the Council takes no action within the 45-day window, the RFP is deemed to be approved by the Council. For less costly or shorter-term projects, the RFP is sent to the Council for a passive 10-day review. The review thresholds were based on the criteria for Council review of contracts – 45 days for multi-year contracts and 10 days for contracts over \$1 million.¹⁴ The stated rationale for review of the RFPs was included in the Committee report for the P3 Act:

“The Committee believes that early review by the Council of a potential P3 project is essential to ensuring buy-in from the legislative branch on the front end of the procurement process so that the District does not devote significant resources to formulating and bidding out an RFP just to have the Council reject the resulting contract because it was not on board with the project to begin with. Unsolicited proposals would not require up-front Council review because they would not have District resources devoted to RFP formulation.”¹⁵

In addition, the original introduced version of the P3 Act specified that the Council *must* hold a hearing on an RFP transmitted to Council for its review and called for a 90- and 120-day passive review process for approval of the RFPs. However, the report was clear that there should not be a statutory requirement for a hearing by the Council because the Council already has authority to call a roundtable or hearing, and should address process matters through its rules.¹⁶

OP3’s regulations¹⁷ specify that before issuing any RFP, OP3 will develop a draft RFP for public comment. That draft RFP will be subject to a public hearing by OP3 that complies with the Open Meetings Act and will take place near the proposed project location. Notice of that hearing is published in the *D.C. Register* and is made available to local Advisory Neighborhood Commissions at least 15 days before the hearing. Only after this process is the RFP sent to Council for one of its two review tracks.¹⁸

Bill 22-911, as introduced, contained two provisions affecting Council review of RFPs. First, the bill would change the Council review requirement for large-scale projects 45-day passive review to 45-day active review. The P3 Act already allows a Councilmember to move to disapprove an RFP at a legislative meeting if he or she does not want the RFP to move forward.¹⁹ Active review of an RFP will not require closer examination of the RFP because it would not mandate a hearing or roundtable. The more-likely outcome would be RFPs being deemed

¹³ P3 Act, *supra* note 4 at § 2-273.03.

¹⁴ P3 Act, *supra* note 4 at § 2-273.05.

¹⁵ Committee of the Whole, Committee Report on Bill 20-595, at 6 (2014).

¹⁶ *Id* at 7.

¹⁷ 27 DCMR § 4800 *et seq.*

¹⁸ 27 DCMR § 4803.2.

¹⁹ P3 Act, *supra* note 4 at § 2-273.05(b)(2).

disapproved because of incorrect counting of the review days, or administrative error by a Councilmember or Committee not requesting approval of the RFP in time. Thus, the Committee Print strikes the change from passive to active review.

Second, Bill 22-911, as introduced would only require the Council to review and approve the “core elements” of an RFP. According to the Executive, there will likely be changes between a draft RFP reviewed and approved by the Council, and the final RFP issued to bidders. OP3 intends to conduct one-on-one meetings with qualified bidders to get feedback on the RFP. According to OP3, this will increase competition and yield more accurate bids.²⁰ The core elements would include detailed description of the scope of the project, evaluation criteria, and a high-level summary of technical requirements. The Committee disagrees with the Executive’s approach to limiting the Council’s review authority. Under the P3 law and regulations, OP3 may work with potential bidders through a request for information, through the public hearing process, and through negotiations and market research on the draft RFP before it is transmitted to the Council for its review.

OP3 argues that coming to such granularity in the RFP is burdensome and that the Council should not be concerned with the details. On the contrary, requiring OP3 to craft a full and complete RFP before it comes to Council for approval will increase the quality of the RFP and will ensure that the scope of work is well thought out and that the RFP is in a position that will be beneficial to the District. Indeed, if Council review of non-P3 RFPs were required under the law, District contracts may not see the scope-creep that is so common, especially among construction projects in the District. As the Committee has observed in a number of construction projects, if the scope of work and RFP are not well thought out and ready for bid, the solicitation or the awarded project are subject to costly modifications or change orders. Thus, the Committee Print strikes the provision for Council review of only the core elements of an RFP, included in the bill as introduced.

Conclusion

The Committee agrees strongly with the executive that OP3 should leverage the expertise of OCP for soliciting and awarding projects. OP3 is currently comprised of four staff – the Director, Deputy Director, and two project staff. The staff performs outstanding work and is committed to the mission of OP3 and the District. It is important that OP3 continue to leverage the expertise of OCP to ensure OP3 can carry out its mission. The Committee strongly disagrees with the notion of reducing what the Council should review with regard to an RFP, or how the review should be conducted – all before a single project has come to the Council for review which will inform the process going forward.

Bill 22-911, as refined in the Committee Print, gives OP3 needed support to conduct successful P3 procurements while preserving the Council’s review authority for solicited projects. The Committee therefore recommends approval of Bill 22-911 as reflected in the Committee Print.

²⁰ TESTIMONY

II. LEGISLATIVE CHRONOLOGY

- July 10, 2018 Bill 22-911, the “Office of Public-Private Partnerships Delegation of Authority Amendment Act of 2018” is introduced by Chairman Mendelson.
- July 10, 2018 Bill 22-911 is officially “read” at the October 3, 2018 additional meeting of the Committee of the Whole and referred to the Committee of the Whole.
- July 20, 2018 Notice of Intent to Act on Bill 22-911 is published in the *District of Columbia Register*.
- September 14, 2018 Notice of a Public Hearing on Bill 22-911 is published in the *District of Columbia Register*.
- October 18, 2018 The Committee of the Whole holds a public hearing on Bill 22-911.
- November 13, 2018 The Committee of the Whole marks-up Bill 22-911.

III. POSITION OF THE EXECUTIVE

Seth Miller Gabriel, Director, Office of Public-Private Partnerships, testified on behalf of the Executive. Mr. Miller Gabriel expressed support for provisions of the bill to allow for the delegation of authority and staff resources between OP3 and OCP. He also testified in support of lessening the Council review requirements to the core elements of an RFP rather than the full RFP. Finally, he testified that a change from passive to active Council review could slow the approval process or allow for inadvertent disapproval of RFPs not acted upon in time by the Council.

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 22-911 on Thursday, October 18, 2018. The testimony summarized below is from that hearing. Copies of written testimony are attached to this report.

Seth Miller Gabriel, Director, Office of Public-Private Partnerships, testified on behalf of the Executive. His testimony is summarized in section III above.

The Committee received no other testimony or comments on Bill 22-911.

VI. IMPACT ON EXISTING LAW

Bill 22-911 amends the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(f)) to allow OCP employees delegated authority from OP3 to exercise such authority in conformance with the P3 Act and regulations. Bill 22-911 also amends the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-272.01) to allow for OP3 to delegate contracting authority to OCP employees at the discretion of OCP.

VII. FISCAL IMPACT

The attached **September 28, 2018** fiscal impact statement from the District's Chief Financial Officer (CFO) states that funds are sufficient in the FY 2019 through FY 2023 budget and financial plan to implement Bill 22-911.

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of Bill 22-911.
<u>Section 2</u>	Provides OCP authority to administer procurements on behalf of OP3.
<u>Section 3</u>	Provides OP3 delegation authority to OCP to administer procurements.
<u>Section 4</u>	Fiscal Impact Statement.
<u>Section 5</u>	Establishes the effective date by stating the standard 30-day Congressional review language.

IX. COMMITTEE ACTION

X. ATTACHMENTS

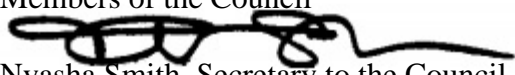
1. Bill 22-911 as introduced.

2. Written Testimony.
3. Fiscal Impact Statement for Bill 22-911.
4. Legal Sufficiency Determination for Bill 22-911.
5. Comparative Print for Bill 22-911.
6. Committee Print for Bill 22-911.

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 11, 2018

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, July 10, 2018. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Office of Public-Private Partnerships Delegation and Council Review Amendment Act of 2018", B22-0911

INTRODUCED BY: Chairman Mendelson

CO-SPONSORED BY: Councilmember McDuffie

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


Chairman Phil Mendelson

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A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

—

To amend the Procurement Practices Reform Act of 2010 and the Office of Public-Private Partnerships Act of 2014 to allow the Office of Public-Private Partnerships to delegate its contracting authority for public-private partnership agreements to the Office of Contracting and Procurement, and to require any employee of the Office of Contracting and Procurement exercising such delegated authority to comply with provisions of the Office of Public-Private Partnership Act of 2014 and any regulations promulgated to effectuate it; to amend the Office of Public-Private Partnerships Act of 2014 to require submission to the Council of the core elements of a proposed request for proposals and to require active approval by the Council of such requests for proposals.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Office of Public-Private Partnerships Delegation and Council Review Amendment Act of 2018”.

Sec. 2. Section 201(f) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(f)), is amended by striking the phrase “requirements of this act” and inserting the phrase “requirements of this act, except as provided in section 201(e) of the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-272.01(e))”.

Sec. 3. Section 201 of the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-271.01 *et seq.*) is amended as follows”

37 (a) Section 101 (D.C. Official Code § 2-272.01) is amended as follows:

38 (1) A new paragraph (1A) is added to read as follows:

39 “(1A) “Core elements of the proposed request for proposals” means a document
40 that includes a detailed description of the scope of the proposed public-private partnership
41 project, the criteria for evaluation and selection of a proposal, and a high-level summary of the
42 material terms and technical requirements of the public-private partnership agreement. The core
43 elements of a proposed request for proposals need not include every material term, condition,
44 appendix, and technical specification that is part of the final request for proposals issued by the
45 Office.”.

46 (2) A new paragraph (16A) is added to read as follows:

47 “(16A) “Substantive change” means a change that makes the final request for
48 proposals materially inconsistent with the core elements of the proposed request for proposals
49 transmitted with the originally approved resolution.”.

50 (b) Section 102 (D.C. Official Code § 2-272.01) is amended by adding a new subsection
51 (e) to read as follows:

52 “(e)(1) The Office may delegate to the Office of Contracting and Procurement (“OCP”),
53 at the discretion of OCP, the authority to serve as the contracting officer for the Office for
54 public-private partnership agreements entered into pursuant to this act and to carry out other
55 contracting functions related to public-private partnerships on behalf of the Office.

56 “(2) Any OCP employee exercising authority delegated pursuant to this
57 subsection shall comply with the provisions of this act and any rules and regulations promulgated
58 to effectuate this act.

59 (c) Section 110 (D.C. Official Code § 2-273.05) is amended as follows:

60 (1) Subsection (a) is amended as follows:

61 (A) The lead-in language is amended by striking the phrase “a proposed
62 resolution to approve the proposed request for proposals” and inserting the phrase “a proposed
63 resolution to approve the core elements of the proposed request for proposals” in its place.

64 (B) Paragraph (1) is amended by striking the phrase “the proposed request
65 for proposals” and inserting the phrase “the core elements of the proposed request for proposals”
66 in its place.

67 (2) Subsection (b) is amended as follows:

68 (A) Paragraph (1) is amended to read as follows:

69 “(1) The core elements of a proposed request for proposals for a public-private
70 partnership project that is anticipated to cost in total \$50 million or more or extend for a term of
71 10 years or greater shall be deemed disapproved by the Council unless, during a 45-calendar day
72 review period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following
73 its receipt by the Office of the Secretary to the Council, the Council adopts a resolution to
74 approve or disapprove the core elements of a proposed request for proposals.”

75 (B) Paragraph (2) is amended as follows:

76 (i) The lead-in language is amended by striking the phrase “A
77 proposed request for proposals” and inserting the phrase “The core elements of a proposed
78 request for proposals” in its place.

79 (ii) Subparagraph (A) is amended by striking the phrase “the
80 proposed request for proposals” and inserting the phrase “the core elements of the proposed
81 request for proposals” in its place.

82 (iii) Subparagraph (B) is amended by striking the phrase “the
83 proposed request for proposals” and inserting the phrase “the core elements of the proposed
84 request for proposals” in its place.

85 (C) Paragraph (3) is amended by striking the phrase “the request for
86 proposals” and inserting the phrase “the core elements of the proposed request for proposals” in
87 its place.

88 (3) Subsection (c) is amended as follows:

89 (A) Paragraph (1) is amended by striking the phrase “be substantially
90 similar to the proposed request for proposals” and inserting the phrase “not be materially
91 inconsistent with the core elements of the proposed request for proposals” in its place.

92 (B) Paragraph (2) is amended by:

93

94 (i) Striking the phrase “the proposed request for proposals” and
95 inserting the phrase “the core elements of the proposed request for proposals” in its place; and

96 (ii) Striking the phrase “a revised proposed request for proposals”
97 and inserting the phrase “the revised core elements of the proposals request for proposals” in its
98 place.

99 (4) Subsection (d)(1) is amended by striking the phrase “a proposed request for
100 proposals” and inserting the phrase “the core elements of a proposed request for proposals” in its
101 place.

102 (d) Section 111 (D.C. Official Code § 2-273.06) is amended by striking the phrase “the
103 proposed request for proposals” and inserting the phrase “the core elements of the proposed
104 request for proposals” in its place.

105 Sec. 4. Applicability.

106 This act shall apply as of June 1, 2017.

107 Sec. 5. Fiscal impact statement.

108 The Council adopts the fiscal impact statement of the Council Budget Director as the fiscal
109 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
110 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

111 Sec. 6. Effective date.

112 This act shall take effect following approval by the Mayor (or in the event of veto by the
113 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
114 90 days, as provided for emergency acts of the Council of the District of Columbia in section
115 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
116 D.C. Official Code § 1-204.12(a)).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Public-Private Partnerships



Public Hearing
on
B22-911, the “Office of Public-Private Partnerships Delegation and Council
Review Amendment Act of 2018”

Testimony of
Seth Miller Gabriel
Director

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
Thursday, October 18, 2018
9:30 AM

Good morning, Chairman Mendelson and members of the Committee of the Whole. My name is Seth Miller Gabriel, and I am proud to serve as the Director of the Office of Public-Private Partnerships (OP3). Thank you for this opportunity to testify today about Bill 22-911, the “Office of Public-Private Partnerships Delegation and Council Review Amendment Act of 2018.”

First, an update on what public-private partnerships (P3s) look like here in the District of Columbia. Mayor Muriel Bowser’s Administration has been working hard to develop the “DC style” of P3s - long-term, performance-based agreements that address the maintenance backlog that the District, like all jurisdictions in the United States today, faces. This effort, led by the OP3 team, aims to identify those projects best delivered through partnerships with the private sector under an availability-payment model that protects both the District’s current and future fiscal health - sort of like a mortgage with all building upkeep included. The “DC style” of P3 also reflects DC values by helping to create middle-class jobs, construction at the highest environmental standards, and facilities that serve DC residents in all eight wards. Currently, the Office of Public-Private Partnerships (OP3) is advancing three great projects: Smart Street Lighting, the Henry J. Daly Building renovation, and interactive digital kiosk deployment. All of these projects are in the qualification phase, with two projects, Smart Street Lighting and The Henry J. Daly Building, nearing the end of that phase.

I would now like to discuss Bill 22-911, the “Office of Public-Private Partnerships Delegation and Council Review Amendment Act of 2018,” which has three primary provisions. The first provision clarifies OP3’s ability to delegate its contracting officer authority to the Office of Contracting and Procurement (OCP) and allows OCP personnel to serve that function, subject to the OP3’s enabling legislation rather than OCP’s enabling legislation, the Procurement Practices Reform Act (PPRA). This amendment allows OP3 to better leverage OCP’s administrative support as our procurements continue to progress. With just four full-time employees and an annual budget of \$1.28 million, OP3 has limited resources, IT systems, and staff to complete basic procurement functions. OP3 also intends to utilize OCP contracting officers to conduct independent reviews of proposals as part of the evaluation process, which is a procurement best practice to ensure consistent and fair evaluations. In addition, once OP3 has completed a procurement and selected a preferred bidder, all P3 projects will be transferred to the “owner



agency” to administer the contract during the construction, operation, and maintenance phases of the project. Utilizing OCP for these administrative functions, both during and after the procurement phase, will ensure positive outcomes for each project. Of course, OP3 will continue to lead the procurements for each of its projects, making selection decisions in concert with OCP and owner agencies, and provide the necessary expertise in P3 models that is required to protect the District’s interests.

The second provision of Bill 22-911 would authorize OP3 to submit to Council a summary of a request for proposals (RFP) that highlights the “core elements” of an RFP, instead of submitting the entire RFP for review. This amendment would speed up the P3 procurement process in the District, while still providing detailed information to allow proper oversight by the Council and transparency for residents that such large, critical infrastructure projects deserve. As you know, no other District government procurement process requires Council review of an RFP before that RFP can be issued. For real estate development projects where public lands are being disposed of under D.C. Code § 10-801 only a high-level term sheet is required to be submitted for Council review. The nature of the P3 procurement process also makes it difficult to provide a full, draft RFP to the Council in its final form. For example, it is standard for shortlisted teams that are selected in the P3 RFQ process to be given draft versions of not only the RFP itself, but a full draft of the project agreement that the preferred bidder will ultimately sign. This allows the District and bidders to exchange information and provide feedback that improves competition, bid accuracy, and the overall quality of the project. This extensive one-on-one process often results in numerous changes that are in both the District’s and private partners’ interest. By adopting this amendment, we will ensure that the one-on-one meetings and Council review process can occur in parallel, which ultimately saves the District time and allows OP3 projects to be delivered more quickly. The summary of “core elements” of the RFP and project agreement contemplated by this bill’s language will provide all the details needed for the Council to determine if the scope and key terms of a project are in the District’s interest. The Council will also have review of final contracts for P3 projects, as it does with all contracts of the size contemplated here under the Home Rule Act (D.C. Code § 1-204.51). We think this provision



strikes a balance between practicing good oversight and ensuring streamlined, competitive procurements.

The third and final provision would require the Council to actively approve an OP3 RFP for a project that is over \$50 million, or 10 years in length, instead of the current passive approval process established by the P3 Act. We have concerns about this provision and find it unnecessary because the Council will always have a 45-day period to review P3 projects and accept or reject them by passage of a resolution if it identifies a concern during the passive review period. In addition, the Council already has an additional oversight tool in that it will always approve the final contract that results from an RFP as part of its review authority under the Home Rule Act. Thus, we would not support adoption of this amendment, as it could cause delay of these complex projects.

In closing, I'd like to thank you for your leadership and support - both on this legislation and our overall mission - and I look forward to continuing to work with the Committee. OP3 appreciates the opportunity to explain the impact of this legislation on our work. This concludes my testimony. My staff and I are happy to address any questions you may have at this time.



PROCUREMENT PRACTICES REFORM ACT OF 2010
D.C. OFFICIAL CODE § 2-351.01 *et seq.*

§ 2-352.01. Office of Contracting and Procurement; authority.

* * *

(f) The CPO may conduct procurements and award contracts on behalf of any agency exempt under this chapter or authorized to procure independently of OCP, when requested by the agency to do so. In conducting procurements or awarding contracts, the CPO shall comply with ~~the requirements of this act~~ requirements of this act, except as provided in section 102(e) of the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-272.01(e)).

PUBLIC-PRIVATE PARTNERSHIP ACT OF 2014
D.C. OFFICIAL CODE § 2-271.01 *et seq.*

§ 2-272.01. Establishment of the Office of Public-Private Partnerships

* * *

(e)(1) The Office may delegate to the Office of Contracting and Procurement (“OCP”), at the discretion of OCP, the authority to serve as the contracting officer for the Office for public-private partnership agreements entered into pursuant to this act and to carry out other contracting functions related to public-private partnerships on behalf of the Office.

(2) Any OCP employee exercising authority delegated pursuant to this subsection shall comply with the provisions of this act and any rules and regulations promulgated to effectuate this act.

1 **DRAFT COMMITTEE PRINT**
2 **Committee of the Whole**
3 **November 13, 2018**

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6 A BILL

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9 22-911

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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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17 To amend the Procurement Practices Reform Act of 2010 and the Public-Private Partnership Act
18 of 2014 to allow the Office of Public-Private Partnerships to delegate its contracting
19 authority for public-private partnership agreements to the Office of Contracting and
20 Procurement, and to require any employee of the Office of Contracting and Procurement
21 exercising such delegated authority to comply with provisions of the Public-Private
22 Partnership Act of 2014 and any regulations promulgated to effectuate it.
23

24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 act may be cited as the “Office of Public-Private Partnerships Delegation of Authority
26 Amendment Act of 2018”.

27 Sec. 2. Section 201(f) of the Procurement Practices Reform Act of 2010, effective April
28 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.01(f)), is amended by striking the phrase
29 “requirements of this act” and inserting the phrase “requirements of this act, except as provided
30 in section 102(e) of the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C.
31 Law 20-228; D.C. Official Code § 2-272.01(e))” in its place.

32 Sec. 3. Section 102 of the Public-Private Partnership Act of 2014, effective March 11,
33 2015 (D.C. Law 20-228; D.C. Official Code § 2-272.01), is amended by adding a new subsection
34 (e) to read as follows:

35 “(e)(1) The Office may delegate to the Office of Contracting and Procurement (“OCP”),
36 at the discretion of OCP, the authority to serve as the contracting officer for the Office for
37 public-private partnership agreements entered into pursuant to this act and to carry out other
38 contracting functions related to public-private partnerships on behalf of the Office.

39 “(2) Any OCP employee exercising authority delegated pursuant to this
40 subsection shall comply with the provisions of this act and any rules and regulations promulgated
41 to effectuate this act.”.

42 Sec. 4. Applicability.

43 This act shall apply as of June 1, 2017.

44 Sec. 5. Fiscal impact statement.

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

48 Sec. 6. Effective date.

49 This act shall take effect following approval by the Mayor (or in the event of veto by the
50 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
51 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
52 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
53 Columbia Register.