

AN ACT

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Columbia
Official Code

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Procurement Practices Act of 1985 to establish the use of full and open competition in procurement, to restrict direct voucher payments, to define a responsible bidder, to require the Chief Procurement Officer to submit annual procurement reports and justify all incumbent contracts that have not been timely bid prior to expiration, and to prohibit emergency procurement due to internal governmental circumstances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Procurement Practices Timely Competition Assurance and Direct Voucher Prohibition Amendment Act of 2006".

Sec. 2. The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), is amended as follows:

(a) Section 101(b) (D.C. Official Code § 2-301.01(b)) is amended by adding a new paragraph (2A) to read as follows:

Amend
§ 2-301.01

“(2A) To obtain full and open competition by providing that contractors are given adequate opportunities to bid and that government receives sufficient bids to ensure that it obtains the lowest possible price for goods and services that meet specifications and standards for quality.”.

(b) A new section 105f is added to read as follows:

“Sec. 105f. Direct voucher payments.

“(a) All District of Columbia agencies and instrumentalities and their employees shall comply with Financial Management and Control Order No. 05-002-Revised issued by the Chief Financial Officer (“CFO”). The CFO shall determine that sufficient funds exist to pay for expenditures of any items not included in the District’s System of Accounting and Reporting before a voucher and payment for any such expenditure may be authorized.

“(b) The requirement under subsection (a) of this section shall apply to all kinds of payments, including payments based on contractual services, regulations, single source procurement, mutual written agreements, contributions, and payments mandated by the budget,

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law, or court orders.”

(c) Section 107 (D.C. Official Code § 2-301.07) is amended as follows:

**Amend
§ 2-301.07**

(1) Designate the existing paragraph (29A) as paragraph (29A-1).

(2) Add a new paragraph (29A) to read as follows:

“(29A) “Full and open competition” means that all responsible bidders are permitted to submit sealed bids or competitive proposals for the proposed contract.”

(3) Paragraph (40) is amended to read as follows:

“(40) “Responsible bidder” means a prospective contractor that:

“(a) Has adequate financial resources to perform the contract or the ability to obtain those resources;

“(b) Is able to comply with the required or proposed delivery or performance schedule, based upon the bidder’s existing commercial and government contract commitments;

“(c) Has a satisfactory performance record;

“(d) Has a satisfactory record of integrity and business ethics;

“(e) Has the necessary organization, experience, accounting, operational control, and technical skills, or the ability to obtain that organization, experience, control, and skill;

“(f) Has the necessary production, construction, technical equipment, and facilities, or the ability to obtain that equipment and facilities; and

“(g) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.”

(d) Section 302 (D.C. Official Code § 2-303.02) is amended by adding new subsections (b-1) and (b-2) to read as follows:

**Amend
§ 2-303.02**

“(b-1) Every source selection process used by the District government shall employ full and open competition, except where the contract is awarded pursuant to section 305. There shall be a rebuttable presumption that full and open competition did not exist where fewer than 2 offers are received. Where full and open competition is not established, the contract shall not be awarded. The agency shall re-solicit offers and include a time and place in the invitations for bids by which the new bids shall be submitted; provided, that the goods or services are still needed by the District.

“(b-2) The presumption that full and open competition did not exist where fewer than 2 offers are received may be rebutted under the following conditions:

“(1) If the CPO documents in writing that he or she complied with the public notice requirements set forth in section 303(c) and (c-1) for competitive sealed bids;

“(2) If the CPO documents in writing that he or she published notice of a competitive sealed proposal in a newspaper of general circulation and on the Internet site of the Office of Contracting and Procurement at least 14 days prior to the due date for proposals; or

“(3) The CPO or his or her designee documents in writing that he or she complied with the requirements for small purchase procurements set forth in section 321.”

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**Amend
§ 2-303.12**

(e) Section 312(a)(1) (D.C. Official Code § 2-303.12(a)(1)) is amended to read as follows:

“(a)(1)(A) Notwithstanding any other provision of this act, a contracting officer may make emergency procurements when there exists an imminent threat to the public health, welfare, property, or safety under emergency conditions as defined in rules adopted pursuant to this act. In no event, however, shall an emergency condition be declared where internal governmental circumstances are solely responsible for the failure of the government to pursue non-emergency source selection procedures.

“(B) Any violation of this paragraph shall be cause for termination of the contracting officer. If the violation was committed at the direction of a supervisor, the supervisor shall be terminated.

“(C) For purposes of this section, “internal government circumstances” means the failure of the District government to publish a notice of an invitation for bids at least 31 days prior to the expiration of an incumbent contract for identical or similar goods or services where it has been determined that these goods or services, even if modified in scope of specificity, represent a continual need of the District government.

“(D) Where there has been violation of this paragraph, the CPO may approve a contract for food, housing or medicine for a period not to exceed 30 days including Saturdays, Sundays, and legal holidays.”.

(f) A new section 319a is added to read as follows:

“Sec. 319a. Report by Chief Procurement Officer.

“(a) The Chief Procurement Officer (“CPO”) shall be required to provide annual reports to the Council delineating all contracts in excess of \$1 million that are scheduled to expire within a year of the date that the report is transmitted to the Council. The report shall be submitted to the Council no later than 30 days after the commencement of the fiscal year.

“(b) The report shall include the following:

“(1) The scheduled expiration date of the contract;

“(2) The status of the solicitation process;

“(3) Information as to whether there are option years associated with the contract;

“(4) Information as to whether the District government intends to exercise those option years;

“(5) The name of the contracting officer technical representative;

“(6) The projected date to advertise for proposals;

“(7) The projected proposal review period;

“(8) The projected award date; and

“(9) A list of all contract awards that exceeded the \$1 million dollar threshold for Council review and approval.

“(c) If a contract under this section is scheduled to expire within 5 months of the date the report is transmitted to the Council, the CPO shall submit a timeline containing all proposed

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actions by the Office of Contracting and Procurement to ensure that an award is made prior to the expiration date. If an invitation for bids is not scheduled for publication 31 days prior to the expiration of the incumbent contract for identical or similar goods or services where it has been determined that those goods or services, even if modified in scope or specificity, represent a continual need of the District, the CPO shall include the rationale for the government’s failure to comply with this 31-day requirement.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.2(c)(3)).

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia