

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
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Director

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

John A. Wilson Building
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Washington, DC 20004
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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 22-0911, 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 greatly 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 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. Of course, should any of those “core elements” change as a result of feedback heard from bidders in the one-on-one process, policy decisions made by the Executive, or recommendations of the Council, OP3 would be required to seek additional Council approval before the final RFP is issued. 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 Charter. 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 Charter (D.C. Code § 1-204.51). 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.

