

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Office of Property Management Establishment Act of 1998 to require a justification for sole source contracting; to require that the Office of Property Management give notice and report to the Council of an award of a contract that involves expenditures in excess of \$500,000, including a contract with a party where multiple contracts with that party over a 12-month period, in the aggregate, involves expenditures in excess of \$500,000 (in the case of sole source contracts awarded through noncompetitive negotiations, in excess of \$50,000); to require that certain certifications be submitted to the Council for real property contracts involving expenditure in excess of \$1 million during a 12-month period; to authorize the use of experienced and independent representatives to negotiate on behalf of the District, for all proposed leases where the District is the lessee, and the annual lease obligation exceeds \$500,000 or the square footage exceeds 50,000 square feet for proposed leases where the District is the lessor, and the projected revenue will exceed \$100,000 annually or the square footage exceeds 25,000 square feet and for proposed real property dispositions; to require that the Office of Property Management assemble an inventory of all real property assets under the executive control of the Mayor; to require a periodic audit of the District's lessor obligations to determine whether it would be in the best interests of the District to consider lease renegotiation, and to compare the costs and benefits of continuing month-to-month leases where the District is the lessee; and to require written rules governing the functions of the Office of Property Management.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Property Management Reform Amendment Act of 2004".

Sec. 2. The Office of Property Management Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 10-1001 *et seq.*), is amended as follows:

(a) A new section 1801a is added to read as follows:

"Sec. 1801a. Definitions.

"(a) For the purposes of this act, the term:

“(1) “Contract” means a contract to acquire or dispose, in whole or in part, of a real property asset, by lease, purchase, sale, or otherwise, which contract is awarded by the Officer in accordance with rules established pursuant to section 1806h. The term “contract” shall include a contract to acquire a leasehold interest in which the landlord constructs, for the benefit of the District's use, leasehold improvements affixed to the real estate. The term “contract” shall also include a contract to acquire representative services pursuant to section 1806e.

“(2) “Funding certification” means an analysis prepared by the Chief Financial Officer which concludes that the proposed expenditures have been appropriated and are consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02.

“(3) “Legal sufficiency certification” means an analysis prepared by the Attorney General which concludes that the proposed contract complies with applicable law. A legal sufficiency certification shall include a statement of whether the proposed grantor, lessor, or other such party conveying an interest in real property has any currently pending claims against the District.

“(4) “Officer” means the Chief Property Management Officer.

“(5) “Party” means any person or entity, including a corporation, general or limited partnership, limited liability company, trust, association, or cooperative, or any person or entity owning or owned by (in any percentage) such person or entity.

“(6) “Qualified real estate professional” means an individual licensed to provide real estate brokerage services in the District pursuant to the District of Columbia Real Estate Licensure Act of 1982, effective March 10, 1983 (D.C. Law 4-209; D.C. Official Code § 42-1701 *et seq.*).

“(7) “Real property asset” means real property titled in the name of the District or in which the District has an interest or jurisdiction and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

“(8) “Representative” means a qualified real estate professional who is not an employee of the District government.

“(9) “Sole source certification” means a report prepared by the Officer which concludes, setting forth the reasons therefor, in accordance with rules established pursuant to section 1806h, that:

“(A)(i) There is only one source for the required contract; and

“(ii) The contract is in the best interests of the District.

“(10) “Tax certification” means an analysis prepared by the Chief Financial Officer which concludes that the proposed grantor, lessor, or other party conveying an interest in a real property asset:

“(A) Is current with its District and federal tax obligations; or

“(B) Has worked out, and is current with, a payment schedule approved by the District or the federal government.”.

(b) New sections 1806a through 1806i are added to read as follows:

“Sec. 1806a. Sole source contracting.

“Contracts may be awarded through noncompetitive negotiations when, under rules implementing this section issued by the Office pursuant to section 1806h, the Officer provides a sole source certification.

“Sec. 1806b. Notice and contract summary to the Council on certain contracts.

“(a) Within 30 days after the award of a contract, the Office shall provide notice and a contract summary to the Council, together with a copy of the contract, if the contract:

“(1) Involves expenditures in excess of \$500,000;

“(2) Together with all other contracts awarded by the Officer to a party during a 12-month period, in the aggregate, involves expenditures in excess of \$500,000;

“(3) Is a sole source contract awarded pursuant to section 1806a which involves expenditures in excess of \$50,000; or

“(4) Is a sole source contract awarded pursuant to section 1806a which, together with all sole source contracts awarded by the Officer to a party pursuant to section 1806a during a 12-month period, in the aggregate, involves expenditures in excess of \$50,000.

“(b) The contract summary under subsection (a) of this section shall be in accordance with section 1806d.

“Sec. 1806c. Criteria for Council review and approval of certain contracts.

“(a) Prior to the award of a contract involving expenditure in excess of \$1 million during a 12-month period, the Mayor shall submit the proposed contract to the Council for review and approval in accordance with this act.

“(b) A proposed contract submitted pursuant to this section shall be accompanied by a contract summary in accordance with section 1806d.

“(c) The Council shall be deemed to approve a contract submitted pursuant to this section if one of the following occurs:

“(1) During the 10-day period beginning on the date the Mayor submits the contract to the Secretary to the Council, no member of the Council introduces a resolution approving or disapproving the contract; or

“(2) During the 45-calendar day period beginning on the date the Mayor submits the contract to the Secretary to the Council, the Council, by resolution, does not disapprove the contract.

“Sec. 1806d. Contract summary for Council review.

“The notice pursuant to section 1806b or a proposed contract submitted pursuant to section 1806c shall be accompanied by a summary, which shall include the following:

“(1) The name of the proposed grantor, lessor, or other party conveying an interest in real property and the party to receive the consideration to be paid by the District (if other than the party effecting the conveyance);

“(2) The consideration to be paid by the District;

“(3) A legal description of the real property asset that is the subject of the contract;

“(4) For all leases, the primary term of the lease, a description of options to renew the lease, and a description of options to purchase the real property;

“(5) For all leases, the base rent or fees and a schedule of escalations thereunder;

“(6) A description of the District’s specific real property need associated with the proposed contract and a rationale for selection of the real property asset to be acquired by purchase, lease, or other method of acquisition;

“(7) A brief description of the building to be constructed, altered, purchased, or acquired, or the space to be leased, including its location, size, and condition (if applicable), and its conformity with allowable uses under the Zoning regulations;

“(8) An estimate of the gross and net costs to the District government of the facility to be constructed, altered, purchased, or acquired, or the space to be leased;

“(9) The facility’s conformity with the Public Facilities Plan developed pursuant to Title VI of the District of Columbia Comprehensive Plan Act of 1984, effective April 10, 1984 (D.C. Law 5-76; 31 DCR 1049);

“(10) A statement by the Officer that suitable space owned by the District is not available or cannot be reasonably renovated or altered and that suitable rental space is not available at a price commensurate with the space and price to be afforded through the proposed action, including a current survey of suitable vacant rental office space;

“(11) A certification by the Officer that no other public space is available, including surplus government property that is under the control of the Board of Education;

“(12) A statement by the Officer of rents and other housing costs currently being paid by the District for entities of the District government to be housed in the building to be constructed, altered, purchase, or acquired, or the space to be leased;

“(13) A funding certification;

“(14) A legal sufficiency certification;

“(15) A tax certification; and

“(16) Other aspects of the proposed contract that the Officer considers significant.

“Sec. 1806e. Representative program.

“(a) The Officer may contract for the services of a representative to provide real estate brokerage services for the following:

“(1) For proposed leases where the District is the lessee, if the annual lease obligation exceeds \$500,000 or the square footage exceeds 50,000 square feet;

“(2) For proposed leases where the District is the lessor, if the projected revenue will exceed \$100,000 annually or the square footage exceeds 25,000 square feet; or

“(3) For all proposed contracts for the sale of real property.

“(b) Each contract for the services of a representative shall be awarded on a competitive basis to a qualified real estate professional.

“(c) The representative shall perform an analysis of all aspects of the proposed contract, including the costs and benefits, and shall negotiate on behalf of the District; provided, that the representative shall not bind the District, and the terms of the contract shall be approved by the Officer or, as required, by the Council.

“(d) For each contract submitted to the Council pursuant to section 1806b or section 1806c, the analysis conducted for that specific contract under this section shall be submitted to the Council for its review.

“(e) Fees paid for the services of a representative may be paid by either party in a transaction, either as a percentage of the total contract value or a fixed dollar amount, according to the terms of the contract as negotiated between the Officer and the representative.

“Sec. 1806f. Inventory of real property assets.

“(a)(1) The Office shall submit to the Council an inventory of all real property assets, based upon information provided by each District department, agency, and instrumentality under the executive control of the Mayor. The inventory shall be maintained by the Office on a centralized automated database. The inventory shall contain:

“(A) A detailed description of each real property asset, including the current and prospective future uses of said asset; and

“(B) Facility condition assessments, which shall contain a proposed or actual annual budget for maintenance and deferred maintenance, and a detailed description and estimate of any needed repairs.

“(2) This subsection shall apply within 12 months of the effective date of the Property Management Reform Amendment Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), to improved commercial real property assets, whether occupied or unoccupied, and all real property assets that the Board of Education (“Board”) has determined to be no longer needed for educational purposes and for which jurisdiction has been transferred by the Board to the Mayor for disposal.

“(3) This subsection shall apply within 18 months after the effective date of the Property Management Reform Amendment Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), to improved residential real property assets and unimproved real property assets, not including unimproved land used solely for recreational purposes.

“(4) This subsection shall apply within 24 months after the effective date of the Property Management Reform Amendment Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), to all real property assets.

“(b) Thereafter, the inventory for each real property asset listed in the database pursuant to subsection (a) of this section shall be updated at least once every 3 years.

“(c) The Officer shall submit to the Council an annual report indicating the changes in the inventory no later than 30 days after the beginning of the fiscal year.

“Sec. 1806g. Periodic audit of leased properties.

“Within 12 months after the effective date of the Property Management Reform Amendment Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), and, thereafter not less than once annually, the Officer shall conduct an audit of all leased real property assets as follows:

“(1) If the District is the lessor, the Office shall review the lease to determine whether it would be in the best interests of the District to consider lease renegotiation and submit to the Council a report summarizing the results of the review.

“(2) If the District is the lessee under a month-to-month lease, the Office shall submit a report to the Council detailing:

“(A) The annualized cost to the District of continuing the month-to-month lease; and

“(B) The benefit to the District of continuing the month-to-month lease.

“(3) If the Office determines that the costs of maintaining a month-to-month lease where the District is the lessee outweighs its benefits, within 30 days of that determination, the Office shall submit a detailed plan to the Council to relocate the agency or function under a long-term lease.

“(4) Within 12 months after the effective date of the Property Management Reform Amendment Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), and, thereafter not less than once annually, for properties where the District is either a lessor or lessee, the Office shall submit an annual report setting forth the monthly rent roll itemizing the base rent, payments, and receipts for each leased property.

“Sec. 1806h. Certain contracting rules.

“(a)(1) Within 180 days of the effective date of the Property Management Reform Act of 2004, passed on 2<sup>nd</sup> reading on October 5, 2004 (Enrolled version of Bill 15-715), the Officer shall propose rules detailing written policies, procedures, internal control measures, and performance standards governing:

“(A) The performance of the functions and operations of the Office under this act; and

“(B) The functions and operations of personnel in other agencies performing property management functions.

“(2) The proposed rules shall include standard forms for all contracts as defined in this act.

“(b) The proposed rules shall be submitted to the Council for a 60-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not

approve or disapprove the proposed rules, in whole or in part, by resolution within the 60-day review period, the proposed rules shall be deemed approved.

“Sec. 1806i. Jurisdiction.

“Jurisdiction over any civil dispute, claim, protest, or cause of action whatsoever, including an action or claim of possession, arising out of or relating to a contract, shall be vested exclusively in the Superior Court of the District of Columbia.”.

Sec. 3. Section 705(c) of the District of Columbia Revenue Act of 1970, approved January 5, 1971 (84 Stat. 1939; D.C. Official Code § 1-301.91(c)), is repealed.

Sec. 4. 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 § 1-206.02(c)(3)).

Sec. 5. 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. 788; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia