

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE ON FACILITIES AND PROCUREMENT
NOTICE OF JOINT PUBLIC OVERSIGHT ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE**

**CHAIRPERSON ROBERT C. WHITE, JR.
COMMITTEE ON FACILITIES AND PROCUREMENT**

ANNOUNCE A JOINT PUBLIC OVERSIGHT ROUNDTABLE

on

“Timeliness of Council Contract Submissions by the Executive and Retroactive Contracts”

on

**Wednesday, January 22, 2020, 8:00 a.m.
Room 500, Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson, Committee of the Whole, and Councilmember Robert C. White, Jr., Chair of the Committee on Facilities and Procurement, announce a joint public oversight roundtable on “Timeliness of Council Contract Submissions by the Executive and Retroactive Contracts.” The hearing will be held at 8:00 a.m. on Wednesday, January 22, 2020 in the Council Chambers of the John A. Wilson Building.

The purpose of this oversight roundtable is to receive testimony from government witnesses on why contracts – most notably option period contracts – are coming to the Council for approval after the beginning of the contract period. Under the Home Rule Act and the Procurement Practices Reform Act of 2010 (PPRA), an executive agency must transmit to the Council for its review and approval any contract valued at over \$1 million in a year. This requires the Executive to transmit to the Council the contract (including for renewal for an option period) for a period of 10 days of review. If the Council does not take action on the contract in that 10-day period, it is deemed approved without further Council action. Thus, Executive agencies must plan contract submittals to be timely, to ensure that the full 10 days can elapse before the period of performance begins under the contract.

In limited cases, the Executive has experienced unanticipated increases to the cost of a base or option period of a contract causing the contract value to rise above \$1 million, thus requiring retroactive approval by the Council of the aggregate contract period. Such retroactive approval is transmitted as an emergency act to retroactively approve the contract and authorize payment under the contract. Importantly, these contracts are still considered by the Council to be retroactive because the Council is approving the full contract period, not just the costs over the previous cost. These were deemed “tipping contracts” because while the initial contract was under \$1 million, subsequent changes caused the value to tip over \$1 million even though it was anticipated to be under \$1 million at the time of execution. When unforeseen, these tipping actions are a legitimate practice.

In 2009, there were 17 retroactive contracts submitted for Council approval. By 2015 the number peaked at 81 submissions, and in 2019 there were 63. Moreover, there has been a proliferation of retroactive contracts that the Executive still calls “tipping” but are not for unanticipated costs. For example, at the January 7, 2020 legislative meeting, there were five retroactive option-period approvals on the agenda for periods that were well known to be over \$1 million but were not sent to the Council in time to allow for the prospective 10-day passive approval. This must be for one of two reasons: the Executive wants to avoid Council review (which seems unlikely), or the Executive is planning poorly for future option periods. Either way, it is not an efficient procurement process and it hampers the Council.

Testimony at this hearing will be limited to the Office of Contracting and Procurement (OCP), the Department of Behavioral Health (DBH), and the Child and Family Services Agency (CFSA). Each of these agencies were responsible for one or more retroactive contract on the January 7th legislative meeting agenda. DBH is under OCP’s procurement authority while CFSA has independent procurement authority but must still follow the PPRA. Materials pertaining to this hearing, including a draft witness list, can be accessed 24 hours in advance of the hearing at <http://chairmanmendelson.com/circulation>.

While this hearing is *limited to testimony from specified government witnesses*, written statements from the public will be accepted and made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, February 5, 2020.