



Board of Ethics and
Government Accountability

www.BEGA-DC.GOV

2015 Best Practices Report

Robert J. Spagnoletti, Chair
Deborah Lathen, Member

441 4th Street, NW, Suite 830 South, Washington , DC 20001
Phone: 202-481-3411 E-Mail: bega@dc.gov

The Board of Ethics and Government Accountability (BEGA) was established in 2012, at a time when “the District’s growing respect among DC residents, in the region and across the nation [had] been eroded by a series of allegations of ethical or criminal misdeeds” by several elected officials.¹ The Council viewed BEGA as being part of “a framework with the ability to respond to future misconduct,” charging it “exclusively with administering and enforcing the new and enhanced [ethics] laws and code of conduct.”²

BEGA, however, is not just about enforcement; it performs several other core functions as well. For example, BEGA conducts general and specialized ethics training sessions for District government employees and public officials; it produces training materials, including, in particular, an Ethics Manual;³ and it gives advice, both informally and in formal written advisory opinions.⁴ The experience gained from those efforts, coupled with insights gained from attending outside trainings, has prepared BEGA well to meet another of its principal responsibilities – conducting an annual assessment of ethical standards for public employees and officials, including a review of national best practices of government ethics, and presenting recommendations for amending the Code of Conduct.⁵

The Comprehensive Code of Conduct

A number of BEGA’s earlier recommendations – presented in what have come to be called Best Practices Reports – were reflected in the Comprehensive Code of Conduct and BEGA Amendment Act of 2014 (BEGA Amendment Act).⁶ Indeed, as the Council itself noted, the BEGA Amendment Act “incorporate[d] the most critical recommendations set forth in the first and second Best Practices Reports.”⁷ No result of those recommendations is more significant

¹ Report of the Committee on Government Operations on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Act of 2011, at 9 (Council of the District of Columbia, December 5, 2011) (Ethics Act Committee Report).

² *Id.* at 2. The Code of Conduct is defined in section 101(7) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (Ethics Act), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(7)).

³ The Ethics Manual can be accessed at <http://www.bega-dc.gov/documents/manualguide>.

⁴ Section 219 of the Ethics Act (D.C. Official Code § 1-1162.19) authorizes the Director of Government Ethics to issue an advisory opinion to a District government employee or public official who requests advice, as well as to issue an advisory opinion, on his or her own initiative, “on any general question of law he or she considers of sufficient public importance concerning a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.” All of these opinions can be accessed <http://www.bega-dc.gov/documents/advisory-opinions>.

⁵ See section 202(b) of the Ethics Act (D.C. Official Code § 1-1162.02(b)).

⁶ Effective July 15, 2014 (D.C. Law 20-122; 61 DCR 8246).

⁷ Report of the Committee on Government Operations on Bill 20-412, the Comprehensive Code of Conduct and BEGA Amendment Act of 2014, at 3 (Council of the District of Columbia, March 25, 2014) (BEGA Amendment Act Committee Report).

than the requirement that BEGA “submit to the Council for its consideration proposed legislation ... to establish a revised Code of Conduct.”⁸

BEGA submitted the proposed legislation in the form of Bill 21-250, the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015,” in June of this year.⁹ As suggested by its title, the bill establishes the Comprehensive Code of Conduct of the District of Columbia (CCC), which would apply to the ethical responsibilities of all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council, boards and commissions, and Advisory Neighborhood Commissions. The CCC, in other words, would operate to further the Council’s clear and continuing intent “to create an independent and unified ethics scheme”¹⁰ in two significant ways – by consolidating the District’s government ethics laws in one place and by standardizing practices across the legislative and executive branches.

Bill 21-250 was referred to the Committee on the Judiciary and was the subject of a public hearing on July 8.¹¹ BEGA appreciates the committee’s action on the bill and could end this report by urging that the measure be passed along to the full Council for approval. After all, between the CCC and other provisions in the measure, the bill incorporates most of the recommendations made in previous Best Practices Reports, but have yet to see Council action.¹² Those recommendations are summarized in the attached Overview. However, BEGA would be remiss in failing to point up the significant aspects of the fact that Bill 21-250 is only one of at least five other bills now pending before the Committee on the Judiciary or the Committee of the Whole that also would amend the Ethics Act or operate to impact BEGA operations.¹³

⁸ See section 209(b)(1) of the Ethics Act (D.C. Official Code § 1-1162.09(b)(1)) (as amended by section 2(c) of the BEGA Amendment Act).

⁹ A copy of the bill and an accompanying section-by-section analysis can be accessed at <http://www.bega-dc.gov/legislation/comprehensive-code-conduct-establishment-act-2015>.

¹⁰ See BEGA Amendment Act Committee Report at 4; *see also id.* at 4-5 (“The Ethics Act took great strides toward consolidating ethics statutes under a single heading within the Code; however, the complete Code of Conduct is still scattered between statutes, regulations, and the Council’s Code of Official Conduct.”).

¹¹ A video of the hearing is available at http://dc.granicus.com/MediaPlayer.php?view_id=34&clip_id=2800.

¹² In the Overview, the references to sections in the column for Bill 21-124 are to provisions in the “Ethics Reform Amendment Act of 2015.” See footnote 13 and accompanying text. Bill 21-124 includes a number of recommendations made in last year’s Best Practices Report.

¹³ Along with Bill 21-250, Bill 21-118, the “BEGA Board Size Amendment Act of 2015,” and Bill 21-124, the “Ethics Reform Amendment Act of 2015,” are pending before the Committee on the Judiciary. Pending before the Committee of the Whole are Bill 21-36, the “Government Ethics Prohibition on Third-Party Employers Amendment Act of 2015”; Bill 21-37, the “Councilmembers Outside Employment Disclosure Act of 2015”; and Bill 21-332, the “Council Financial Disclosure Amendment Act of 2015.” All the bills are available at <http://lims.dccouncil.us>.

First, aside from the number and scope of the bills themselves, the measures, together with Bill 21-250, represent an encouraging continuation of the Council’s “incremental approach”¹⁴ to enhance the District’s government ethics laws and to make the government itself more open and accountable. As has been recognized, “[e]thics reform ... must be an ongoing process.”¹⁵

Second, unlike the Ethics Act, the bills come at a time of a relative ethics “calm” in the District. The fact that the bills “are not a response to any recent scandal speaks to the commendable desire to get ahead of conduct that could lead to trouble.”¹⁶ The only point that BEGA can add to that observation is that, to ensure the unified ethics scheme the Council has envisioned for the District government, all the bills should be consolidated in one committee. A similar process was employed four years ago, when the then Committee on Government Operations scrutinized twelve bills and synthesized them into what became the Ethics Act.¹⁷

Looking Ahead

One other reason to add a bit more length to this report is to look ahead to the next. The focus of the 2016 report will be BEGA’s future role in District government contracting, a subject that figured into this year’s Best Practices Symposium. The symposium, entitled “Follow the Money: Improving Ethics Oversight of Contracting with the District Government,” was held on October 15 at the University of the District of Columbia, David A. Clarke School of Law, and was moderated by Dean Katherine (Shelley) Broderick.¹⁸ The panelists were Darrin Sobin, BEGA Director of Government Ethics, Daniel Lucas, D.C. Inspector General, George Schutter, the District’s Chief Procurement Officer, and Patrick Madden, an investigative reporter for WAMU. Members of the public also participated in the discussion.

As readers of earlier Best Practices Reports know, BEGA’s present role in District contracting is limited. The reason is that the Code of Conduct does not cover contractors and vendors, except to subject them to BEGA’s enforcement authority for violating the prohibition in the Procurement Practices Reform Act of 2010 against contingent fees in government contracting.¹⁹ Readers also know that BEGA has looked to expand that role by recommending that the Council

¹⁴ See BEGA Amendment Act Committee Report at 3.

¹⁵ Editorial, *The D.C. Council’s Commendable Effort on Ethics*, Wash. Post, July 29, 2015 (available at https://www.washingtonpost.com/opinions/the-dc-councils-commendable-effort-on-ethics/2015/07/29/c7b8aff6-30bc-11e5-8f36-18d1d501920d_story.html).

¹⁶ *Id.* (discussing, in particular, Bill 21-250 and Bill 21-332).

¹⁷ See Ethics Act Committee Report at 2, 3-4.

¹⁸ BEGA wishes to thank Dean Broderick and her staff for hosting the event.

¹⁹ See section 101(7)(D) of the Ethics Act (D.C. Official Code § 1-1161.01(7)(D)).

amend Chapter 2 (Contracts) of Title 2 of the D.C. Official Code to require that all contracts with the District, as well as all government-assisted projects that the District administers, contain an acknowledgement by contractors/vendors and project beneficiaries that they are subject to BEGA's enforcement authority. The requirement would be similar to Federal Acquisition Regulation (FAR) § 3.1003(a)(1), which requires that federal contracts that are expected to exceed \$5,000,000 in value and to take 120 days or more to perform to contain a clause setting out a Code of Business Ethics and Conduct.²⁰

The symposium panelists suggested other ways to expand BEGA's role in this area. For example, the Council could increase the bases for initiating a BEGA formal investigation by amending section 213(a)(2) of the Ethics Act (D.C. Official Code § 1-1162.13(a)(2)) to include findings by the Office of Contracting and Procurement (OCP) of waste, fraud, or abuse of government resources, or of violations of the Code of Conduct.²¹ The section currently provides for the initiation of formal investigations upon such findings only by the Office of the Inspector General or the District of Columbia Auditor.

The above example of "fast tracking" findings by OCP may be small, but it does serve to illustrate how BEGA can become more involved in the area of District government contracting. What that future role will be is impossible to forecast now. This is especially true because, as discussed by the symposium panelists, there are several bills currently pending before the Council that, if any one or some combination of them becomes law, would dramatically change the nature of the playing field itself. If, for example, Bill 21-14, the "Council Contract Review Repeal Act of 2015," passes, the Council would be out of the contract review process altogether. The bill would repeal section 451 of the District of Columbia Home Rule Act,²² which requires that the Council review and approve contracts involving expenditures in excess of \$1 million during a 12-month period and multiyear contracts. Bill 21-334, the "Procurement Integrity, Transparency, and Accountability Amendment Act of 2015," would add yet another player by establishing the Office of the Ombudsman for Contracting and Procurement within OCP.²³

²⁰ FAR contains policies and procedures for the award, management, and completion of federal contracts. *See, e.g.*, FAR § 3.1002(a) ("Government contractors must conduct themselves with the highest degree of integrity and honesty.").

²¹ While this example is meant to highlight a means to expand BEGA's role in the future, there is no reason why the Council should fail to act upon it sooner, given the several bills discussed above that would otherwise amend the Ethics Act.

²² Codified at D.C. Official Code § 1-204.51.

²³ Both Bill 21-14 and Bill 21-334 Bill 21-397 were introduced by Councilmembers. The Mayor has also proposed legislation. *See* Bill 21-397, the "Procurement Practices Reform Amendment Act of 2015." All the bills are available on the Council's website.

In sum, the state of the District's law on government contracting is in flux. What comes after the Council works through the bills pending before it now – and what role BEGA can then play in the contracting and procurement process – will be discussed in next year's Best Practices Report.

OVERVIEW OF PENDING BPR RECOMMENDATIONS

RECOMMENDATION	CCC	Bill 21-124	Bill 21-250
Expanding Definition of “Conflict of Interest”	Sec. 223a(16)		
Tightening Filing Requirements for Public Financial Disclosure Statements	Sec. 223o(c)(2)(A) (requiring amended PFDS); Sec. 223o(a)(5) (authorizing filing extension)		
Barring Registration of Non-Compliant Lobbyists	Sec. 223r(a)(4)		
Requiring Electronic Filings	Sec. 223r(c)(1) (lobbyist registrations); Sec. 223r(d)(1) (lobbyist activity reports); Sec. 223o(d)(2) (ANC financial disclosure certifications)		
Clarifying Lobbyist Reporting Requirements	Sec. 223r(d)(2)		
Enlarging Filing Period for Lobbyist Activity Reports	Sec. 223r(d)(1)	Sec. 2(g)	
Authorizing Service by Lobbyists on Boards and Commissions	Sec. 223r(e)(6)(B)		
Authorizing Jurisdiction Over Non-Compliant Lobbyists		Sec. 2(c)	
Prohibiting Gifts from Lobbyists	Sec. 223r(e)(1)		
Harmonizing Definition of “Employee”			Sec. 2(b)(12)
Mandating Ethics Training	Sec. 223q		
Clarifying Definition of “Candidate”			Sec. 2(b)(4)

RECOMMENDATION	CCC	Bill 21-124	Bill 21-250
Eliminating Certain Best Practices Reporting Requirements		Sec. 2(a)	
Authoring Sanctions for Certain Actions During Contested Cases		Sec. 2(d)	
Augmenting Confidential Financial Disclosure Requirements	Sec. 223o(b)(9)		