



**Public Hearing on B23-0571, the “Health Benefit Exchange Authority
Independent Procurement Authority Amendment Act of 2019”**

**Testimony of
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**Before the
Committee on Facilities and Procurement
Council of the District of Columbia
The Honorable Robert C. White, Jr., Chairperson**

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Virtual Meeting Platform
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004



1225 Eye Street NW, 4th Floor, Washington, DC 20005

Good afternoon, Chairman White and members of the Committee on Facilities and Procurement. My name is Mila Kofman, Executive Director of the DC Health Benefit Exchange Authority (HBX). HBX is a public-private partnership established to create and operate DC's state-based online health insurance marketplace, "DC Health Link." Thank you for the opportunity to testify before you in support of Bill B23-571, the "Health Benefit Exchange Authority Independent Procurement Authority Amendment Act of 2019." I also want to thank Councilmember Gray for holding a hearing and passing this bill out of the Committee on Health earlier this year.

As you know, the Affordable Care Act (ACA) is constantly facing attacks from the federal government that could jeopardize the health and well-being of our residents and businesses. We appreciate your support, Chairman White, of the ACA and your help to ensure it remains strong in the District. I would also like to thank Mayor Bowser for her support, advocacy for the ACA, and commitment to ensuring that all residents have access to affordable health insurance coverage.

When the Council established a state-based marketplace (SBM) here in the District, it carefully considered how to structure that marketplace and knew from expert advice that procurement independence would be critical to its success. Before enacting the Health Benefit Exchange Authority Act of 2011 ("Establishment Act"), the Council reviewed a report by then Mayor Gray's Health Care Implementation Committee, which noted the need for "*exemptions from obstacles in the general procurement policies of the District code.*"¹ Relying on this report, the Council shaped the Establishment Act to give HBX's governing Board "all the powers necessary to carry out the functions authorized by the [ACA]," including the powers to "enter into any agreements or contracts," "execute the instruments necessary to manage its affairs and carry out the purposes of [the Establishment Act]," and "adopt written policies and procedures governing all procurements of the Authority."²

In the spring of 2013, the Council clarified HBX's independent procurement authority by amending the Establishment Act to exempt HBX from the Procurement Practices Reform Act (PPRA), with an exception for Council review of contracts over one million dollars and for multiyear contracts. This was for five years sun-setting on September 30, 2018.³ In 2018, the Fiscal Year 2019 Budget Support Act of 2018 extended the sunset provision for HBX's independent procurement authority to September 30, 2023.⁴ Bill 23-571 would make the exemption permanent by removing the sunset.

We strongly support B23-571 because independent procurement authority continues to be critical to our operations. Our procurement volume is just as high as it was in the early years of our operations. Below is a table summarizing our procurement-related activity for FY2018 through

¹ See Committee Report, Health Benefit Exchange Act of 2011 (citing District of Columbia Mayor's Health Reform Implementation Committee Insurance Subcommittee Report and Recommendations on the Health Insurance Marketplace of the District of Columbia (April 12, 2012) ("Report"), at Appendix 2 (emphasis added)).

² See D.C. Code § 31-3171 *et. seq.*

³ See Health Benefit Exchange Authority Establishment Emergency Amendment Act of 2013, effective April 15, 2013 (D.C. Act 20-49); Health Benefit Exchange Authority Establishment Temporary Amendment Act of 2013, effective May 15, 2013 (D.C. Act 20-69); Permanent Supportive Housing Applications Streamlining Amendment Act of 2013, effective March 14, 2014 (D.C. Law L20-0094).

⁴ See Fiscal Year 2019 Budget Support Act of 2018, § 1012, effective October 1, 2018 (D.C. Law 22-0168).

FY2020, showing the high volume of our procurement activities:

Table 1: Summary of Procurements

| | FY20 | FY19 | FY18 |
|---|-------------|-------------|-------------|
| Council-approved HBX Contracts (all contracts over \$1 million) | 5 | 3 | 3** |
| HBX Board-approved Contracts (all contracts over \$100,000) | 9 | 14 | 17 |
| Contract Modifications* | 58 | 34 | 40 |
| Purchase Orders (includes task orders) | 166 | 186 | 184 |
| Purchase Order Modifications | 164 | 206 | 109 |

*Includes Council and HBX Board-approved contracts.

**The Council approved 3 contracts for HBX. In testimony before the Health Committee, we erroneously reported 4.

Also, when we look back at FY2014, our first full fiscal year of operating, we had 154 purchase orders. In FY2020, we processed 166 purchase orders. The volume over the years reflects HBX’s short IT implementation timeframes, the need for specialized IT assistance, and the swift response necessary to changing federal law and local marketplace needs.

We do not take our independent procurement authority lightly. From the very beginning, HBX has been committed to a fair, competitive, and transparent process. Importantly, HBX, as noted earlier, is still subject to the PPRA provision that requires Council approval for multiyear contracts or contracts exceeding one million dollars within a 12-month period. To date, the Council has approved every proposed contract submitted by HBX.

In selecting vendors, HBX has always prioritized Certified Business Enterprises (CBEs). Rather than using a single, large national IT vendor -- which would be quicker and easier -- HBX uses several CBEs to staff the work with local IT talent. For example, HBX uses CBEs for nearly all IT needs for development and support for DCHealthLink.com. Also, HBX chose CBEs to perform services needed to support the HBX partnership with Massachusetts’ state-based marketplace, the Massachusetts Health Connector. Since executing that partnership in 2017, HBX has paid District CBEs more than \$10.5 million for development and operations work. Importantly, since our inception, HBX has exceeded the goals established by the Department of Small and Local Business Development for mandatory CBE spending each year. For example, our FY2019 required spending goal was \$10,562,405. We exceeded that by spending \$12,562,022 with SBEs/CBEs. For FY2020, our required spending goal was \$9,418,795. We exceeded that by spending \$12,354,804 with SBEs/CBEs.

The procedures enabled by HBX’s independent procurement authority help us fulfill our CBE commitments with an efficiency that benefits both HBX and vendors. For example, in 2019, HBX conducted a start-to-finish competitive procurement for CBEs in a six month time period—

from the issuance of a complex solicitation for multiple types of IT services all the way to HBX Executive Board and Council approval.

HBX's procurement rules are stringent and require a public process for oversight and approval of contracts. The PPRA authorizes contracts up to \$1 million without additional approval. In contrast, HBX contracting officers only have authority to award contracts that do not exceed \$100,000. Any contract over \$100,000 must be reviewed and approved by the HBX Executive Board Finance Committee and then the full HBX Executive Board.⁵

HBX's current procurement policies reflect a comprehensive approach that incorporates best practices from the federal government, DC Government, and other states, plus recommendations from OCP and other experts. HBX's formal *Contracting and Procurement Policies and Procedures* provide detailed rules for every aspect of the HBX procurement process, from pre-solicitation, procurement methods, contract approval, and contract requirements, to protests, claims, and contract disputes. HBX's Executive Board reviews and updates procurement policies periodically.

The HBX procurement process is also subject to multiple audits from various entities, including the United States Department of Health and Human Services Office of Inspector General, independent auditors for the CAFR audit, and the Insurance Regulatory Trust Fund Bureau.⁶ Additionally, in 2015, HBX management started conducting self-reviews of its contracts performed by its Office of the General Counsel. The review helps identify areas for improvement.

HBX's procurement process has worked well because it combines the best government contracting practices with strong transparency and accountability measures. HBX procurement policies have been specially developed to support HBX's numerous low- and high-dollar, time-sensitive procurements, and ensure accountability to the HBX Executive Board and the Council.

⁵ The HBX Executive Board Finance Committee is comprised of three members of the HBX Executive Board. The HBX Executive Board is comprised of seven voting members who are District business owners and residents with expertise in the health insurance and health care field, complemented by four non-voting agency heads including Directors of DHS, DHCF, and DC Health and the Commissioner of DISB. The HBX Executive Board Finance Committee meets as needed and at least on a monthly basis to discuss contracts and other matters. The HBX Executive Board holds regular public board meetings.

⁶ HBX has also used external reviews to improve its procurement practices. We implemented our first Procurement policies on October 3, 2012, just months after the HBX Executive Board took office. In 2013, we retained a private law firm to audit our procurements and ensure that we were using best practices appropriate to our needs and mission. HBX management also asked auditing and legal experts at OCP to help review the policies and suggest revisions. These external reviews produced revised policies and procedures that were approved by the HBX Executive Board on September 10, 2014. The HBX contracting policies and procedures were further revised and approved by the HBX Executive Board on September 21, 2015. While those policies largely retained the 2014 policies in substance and form, amendments further strengthened the integrity of HBX's procurement process and reflect the agency's experience with hundreds of procurements over four years. The amendments included new limits on small purchases, additional clarity on competitive solicitations and awards processes, and use of government processes for bid protests and contract claims. The most recent revision of HBX contracting policies was completed in November 2017 and is available at https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/Updated%20Contracting%20%26%20Procurement%20Policies%20and%20Procedures%2011_8_17.pdf. All current and previous versions of the HBX *Contracting and Procurement Policies and Procedures* can be accessed via the HBX website.

The focused, efficient procurement practices under HBX’s independent authority have been vital to supporting its mission from the start and remains vital now. For example, we hire outside actuaries to analyze proposed premiums so we can advocate for lower premiums for our customers. We rely on vendors to help with in-person and virtual open enrollment events. And when COVID-19 hit, we immediately, in March 2020, made it as easy to enroll as during open enrollment to help residents get insured quickly – relying on our vendors to make IT modifications to DCHealthLink.com.

Expediency and flexibility in procurements allows us to remain in compliance with ever changing federal laws, thereby supporting our continued certification as an SBM, and has allowed us to become self-sustaining after all federal grants that initially funded our entire operation ended. Our procurement authority allows us to implement successfully the District’s goals for having a state-based marketplace, including the flexibility in decision making that comes with having a state-based marketplace.

Since the Council established HBX and authorized our independent procurement authority, we have relied on that authority to carry out our mission successfully. Although we were the last to start building the IT system, we opened for business on time on October 1, 2013 and stayed open—one of only four state exchanges to do so. In a short period of time and by using our independent procurement authority to procure IT services and expert support, we built an on-line health insurance marketplace for residents and District small businesses. The federal government designated DC Health Link as the source of coverage for Congress, including its district offices. And in 2013 President Obama enrolled in coverage on DC Health Link. Since we opened on October 1, 2013, HBX has helped the District cut the uninsured rate by 50 percent. The District is ranked number two in the nation for the lowest uninsured rate according to the last Census report. And, we continue to receive national recognition for our successful outreach, enrollment, and IT system.

HBX has become a model for other SBMs when it comes to transitioning to a commercially-hosted government cloud, an open source code, and an agile IT development process. In 2017, this technology enabled HBX to develop the first-in-the-nation SBM partnership with the Massachusetts Health Connector for Business to develop the IT and operate Massachusetts’ small business health insurance marketplace.⁷ We continue to consult with other states on our open source code and cloud solutions to replace failed systems that relied on costly, rigid out-of-the-box or proprietary hard-coded software. The way we operate and the IT system we have built reflect the needs of our residents and small businesses and a policy priority of expanding access to health insurance. We add new features and improvements frequently (sometimes multiple times per day). The system is never offline while we add new functionality and the next time customers log in they see the new features. Our cloud-based, open source code, positions the District for long-term success.

⁷ Independent procurement authority has also enabled HBX to achieve cost savings by working with other SBMs. For example, in 2016 HBX leveraged its existing contract with a District-based firm for consumer support tools to help make the tools available to other SBMs, and keep costs down. The tools include a doctor directory, health plan match tool, and prescription drug formulary tool to help consumers estimate potential out-of-pocket costs of plans and available in-network doctors and coverage for prescriptions before they enroll. As HBX exercised a new option year, it negotiated a package of discounted rates that would apply if other SBMs also obtained the consumer support tools from the District-based company, which lowered costs for both HBX and other states.

HBX is the only marketplace to be recognized by Amazon Web Services (AWS) City on a Cloud International Competition—this past December 2019, HBX won the Sustainability and Equity Award, and in both 2018 and 2016 won the Best Practices In Innovation Award. HBX was featured in AWS’s announcement for the Fall 2019 City on a Cloud International competition. We were also featured in an issue brief from the National Academy for State Health Policy (NASHP) for our use of open source code for long term sustainability.⁸ Additionally, in a national ranking of consumer decision support tools among all SBMs and the federal marketplace (FFM), HBX was ranked first in both 2018 and 2017 (no report was issued in 2019).⁹

Our cost-effective, cutting-edge IT system means that we have to respond to procurement needs quickly, and our independent procurement authority allows us to do so. Numerous federal agencies regulate and oversee the ACA and issue guidance that requires quick actions or changes to the online marketplace. SBMs must comply or risk losing SBM designation. HBX relies on its procurement authority to comply.

Although quick timelines are problematic, in some cases the new federal requirements are helpful to make coverage affordable and HBX uses its procurement authority to leverage helpful federal initiatives. For example, in June of 2019, the federal administration issued a rule establishing new individual coverage health reimbursement arrangements that enable employers to set up an account for employees to be reimbursed tax-free for individual market health insurance premiums beginning in 2020. Because of the short notice provided by the final rule, no marketplace, including the federal marketplace, had time to change their eligibility rules within their online marketplaces by November 1. However, HBX has taken this as an opportunity and launched two new online tools to educate District employers and employees on taking advantage of this new option. Independent procurement authority provided HBX the flexibility to act quickly.

In addition, in recent years we have had to act quickly to fight federal regulations that undermine the ACA and cause people to lose health insurance. For example, when the federal administration finalized the Public Charge rules—immigrants who are covered by Medicaid are no longer eligible for green cards or other changes in their Visa status—we acted quickly. We partnered with the immigration lawyers funded under the Mayor’s Immigrant Justice Legal Services Grant. We quickly procured professional translator services to be at our in-person enrollment events at Carlos Rosario International Charter School. They translated discussions with immigration attorneys who also attended our enrollment events to help residents understand options and the Public Charge Rule. Having independent procurement authority helped ensure that we could act quickly to protect District residents.

⁸ See Alberts, Corrine, “Building a More Efficient Marketplace: Lessons from DC Health Link’s Experience with Open Source Code” (March 21, 2016) (available at <http://www.nashp.org/building-a-more-efficient-marketplace-lessons-from-dc-health-links-experience-with-open-source-code/>).

⁹ Other examples of national recognition include a 2016 Kaiser Family Foundation ranking of states, DC ranked number one for sign-ups of eligible enrollees. Out2Enroll’s report called [“Key Lessons for LGBT Outreach and Enrollment Under the Affordable Care Act”](#) and Kaiser Family Foundation report [“Taking Stock and Taking Steps: A Report from the Field After the First Year of Marketplace Consumer Assistance Under the ACA”](#) recognized our outreach efforts. We also received PR News Awards in 2015, 2018 and 2019.

In addition to regulations, there are numerous court challenges to the ACA. We work closely with the DC Attorney General Karl Racine to provide declarations in lawsuits defending the ACA and consumer rights. At times, this also requires procurement, e.g. hiring actuaries to do quick and last-minute analysis of impact so we can include data-driven information in our declarations in support of the ACA.

One of many on-going ACA-related court challenges is now at the Supreme Court with oral arguments set for November 10, 2020. The Trump Administration is urging the Supreme Court to strike down the ACA, to take away protections for people with preexisting conditions. Depending on the outcome, changes to DC Health Link may be necessary to mitigate negative impact on residents. While congressional efforts to repeal the ACA have failed, court challenges are on-going.

In addition, each election brings with it the need for quick action in response to changing laws, regulations, policies, and priorities. SBMs like HBX can expect to continue to face changes in law and regulations and must be ready to respond quickly. Effective response requires changes in our operational processes, education and outreach, and our supporting IT systems. These changes, in turn, require a rapid, nimble procurement response.

In closing, HBX's procurement process is fair, transparent, and helps HBX meet the changing needs of District residents and small businesses as an Affordable Care Act state-based marketplace. That is why we strongly support Bill 23-571. We thank CM Gray, Cheh, Bonds, Grosso, and Nadeau for introducing this legislation and Councilmember Allen for cosponsoring it.

This concludes my testimony, and I'm happy to answer any questions you may have.