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OFFICE OF THE SECRETARY

BILL: House Bill 1214
Procurement – Transparency and Application to County Contracts
COMMITTEE: Senate Education, Health and Environmental Affairs
DATE: March 31, 2021
POSITION: Letter of Concern

Upon review of House Bill 1214 – Transparency and Application to County Contracts, the Department of General Services (DGS) provides these comments for your consideration. As amended, House Bill 1214 seeks to apply State procurement law to any county government entity that enters into a procurement contract that uses State funds or is for the benefit of the State. The bill would require:

- DGS to report annually to the Governor on contracts that were executed using state funds, for the benefit of the state, a unit of the state or state official or employees. The report is to examine changes in final cost compared to the bid price, how closely the contract met the listed criteria in the RFP or IFB and whether proper procurement procedures were followed.
 - **The bill is unclear as to what contracts this includes and from whom. This could include contracts that were procured by the Office of State Procurement to literally any contract procured within the State using State funds or for the benefit of any State entity. Depending upon clarification of contracts to be reviewed, this bill may require DGS OSP to review every contract that resulted from any type of procurement that either uses state funds or benefits either the State or the county issuing the contract.**
 - **Many procurement contracts have terms that extend beyond one year. Final cost changes may not be ready for analysis and reporting for up to 5 years.**
 - **Reviewing every procurement file, which is not practicable, is the only way to determine if an agency followed proper procurement procedures to solicit and award a contract.**
- DGS to provide, with an Invitations for Bids (IFB), instructions on how to submit a protest, how to access materials that are open to public inspection & how to request an unsuccessful bidder debrief.
 - **IFBs are not evaluated, they are based solely on the lowest responsive bid from a responsible bidder. These provisions are identified with a Request for Proposals (RFP) not an IFB.**
 - **The responses to an IFB are already available for public inspection at a reasonable time after bid opening and prior to contract award. Bidders are able to view a summary listing of the bids submitted after they are opened through the Bid Tabulation document that is published on eMMA.**



- **IFBs are based upon “best price” or “best evaluated price” and the solicitation would clearly note which applies to that particular procurement. All of these involve pricing as the basis for decision with no other factors involved, therefore there is no benefit to requesting or receiving a debrief.**
- **The items above are all provided in RFP solicitations already, and no change is needed in the law.**

- Within 15 days, DGS is required to publish a notice in eMaryland Marketplace, deliver by email and first-class mail notice of an unsuccessful bid, provide a debrief, explanations, bidder ranking and supporting documentation for the decision process.
 - **Section, §13-103, is addressing IFBs, Section §13-104 addresses RFPs. 15 days is not realistic, nor achievable. DGS strongly supports the 30-day provision to establish consistency for all procurement methods.**
 - **Notices are required to be posted electronically.**
 - **First-class mail is inefficient, adds costs, and does not guarantee delivery to the vendor.**
 - **All vendors must have a current and valid email account to bid or propose.**
 - **A letter is already provided to an unsuccessful IFB bidder and a reason is given for the unsuccessful bid (not the lowest responsive and reasonable price).**

- For sole source procurements, §13-107, requires DGS to publish a notice in eMaryland Marketplace within 15 days.
 - **15 days is neither realistic nor achievable. DGS strongly supports the 30-day provision to establish consistency for all procurement methods.**

- If a pre-bid conference is conducted for a procurement over \$100,000, the procurement officer is to explain the procurement requirements, publish the minutes of the conference, publish a summary of the final evaluation of a proposal, and publish all proposals after award in eMaryland Marketplace. All of these required are to be open to public inspection. Further, the contents of a bid & associated documents submitted with a bid shall be open to public inspection at and following bid opening and published in eMaryland Marketplace. **DGS recommends striking all changes in §13-210 for the following reasons.**
 - **OSP already publishes pre-proposal and pre-bid conference minutes in eMMA.**
 - **Proposals often contain hundreds, sometimes thousands, of pages and must be reviewed for confidential commercial information and other information required to be withheld under the Public Information Act before release to the public. DGS does not have the resources to review every proposal.**

- **Documents submitted with bids often contain confidential commercial information that must be redacted. It is impossible to unseal, review and redact every bid document and make it immediately available at the bid opening.**
- Bid Protest changes proposed in §15-217 limit protests to the latter of 10 days when notice of contract award is published, notice of contract award is delivered or the date on which a bidder or offer receives notice of an unsuccessful bid. The changes proposed are almost identical to current regulations as provided in COMAR 21.10.02.03 and reads as follows:
 - **Under the changes to the protest process in House Bill 1214, a bidder would be restricted to waiting until after one of the three above criteria, at the earliest, to submit a protest. As a practical issue, bidders should be able to submit protests before these and a procurement officer should be able to evaluate the merits of a protest to determine if there were issues with the procurement itself before an award is made.**
- Assigning a staff member from the Governor's Office for Small, Minority, and Women Business Affairs (GOSBA) to each State and county procurement unit. The staff member would observe procurement processes and ensure that minority business enterprise (MBE) goals are being met.
 - **It was suggested in several bill hearings that DGS has ample staff to fulfill this requirement; that is simply false. This recommendation does not consider DBM's authority to issue PINs, nor does it contemplate the complexity of having personnel from each single entity sitting in each agency monitoring the business activities of that agency without adding any benefit to the process or providing any other service or value to either the host agency or the oversight agency.**

In conclusion, many of the changes proposed in House Bill 1214 will impose additional processes that will mandate the need for additional staff and will, by the very nature of the changes sought, greatly increase contract turn-around time. House Bill 1021 of 2017 (Chapter 590) provided for the reform of State procurement and the creation of the Procurement Improvement Council (PIC). The purpose of the PIC is to ensure that the State is addressing various procurement policies and procedures related to State procurement and to advise the General Assembly on proposed legislation in order to enhance the efficiency and transparency of State procurement.

For additional information, contact Ellen Robertson at 410-260-2908.