

# **HB 1214 Letter of Support-Outline-Senate.pdf**

Uploaded by: Wilson, Delegate C.T.

Position: FAV

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Chair  
Business Regulation Subcommittee

House Chair, Veterans Caucus  
Chair, Southern Maryland Delegation

THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

**Testimony for HB 1214**  
Education, Health, and Environmental Affairs Committee

Good afternoon Chairman, Madam Vice – Chair, and esteemed members of the committee. I am Delegate C.T. Wilson and it's a privilege to be here to present:

**House Bill 1214 - Procurement – Transparency and Application to County Contracts**

**Bill Overview:**

Altering the definition of “unit” for the purposes of applying certain provisions of law governing procurement to certain county procurement contracts using State funds or for the benefit of the State; requiring certain invitations for bids and requests for proposals to include certain instructions; altering the period of time within which a unit is required to publish a certain notice of award in a competitive sealed bid or sole source procurement in EMaryland Marketplace; etc.

**Bill Outline:**

1. Whenever procurement is based on competitive sealed bids, a procurement officer shall seek bids by issuing an invitation for bids.
2. Whenever a procurement officer determines that an initial preparation of specifications for price bids is impracticable, the invitation for bids may include a request for unpriced technical offers or samples; and direct bidders to submit price bids:
3. A unit shall consider the prices submitted by bidders whose technical offers or samples have been found acceptable.
4. Price bids may not be opened until after the unit has completed evaluation of the technical offers or samples
5. A unit shall give public notice of an invitation for bids before bid opening in accordance with this subsection
6. A procurement officer shall open bids in public at the time and place designated in the invitation for bids; and announce, record, and post.
7. After obtaining any approval required by law, the procurement officer shall award the procurement contract to the responsible bidder who submits the responsive bid that: is the lowest bid price; if the invitation for bids so provides, is the lowest evaluated bid price; or if it is most favorable to the State.

8. Not more than 15 days after the execution and approval of a procurement contract in excess of \$50,000 awarded under this section, or a lower amount set by the Board by regulation
9. An unsuccessful bidder may request a debrief within 3 days after receiving notice of contract award
10. If a procurement officer decides to conduct a pre-bid conference to explain the requirements of a procurement that is expected to exceed \$100,000, as soon as practicable after the conference concludes, the procurement officer shall have written minutes of the conference prepared.
11. A member of office staff shall be assigned to each unit that is authorized by law to enter into a procurement contract

**Conclusion:** In conclusion, this bill aims to alter the definition of “unit” solely for the purpose of applying certain provisions using State funds or contracts. This requires proposals and bids to be established in a certain manner along with delivery of notices to unsuccessful bidders. Certain documents and minutes must be published in eMaryland Marketplace. A member of the office shall be assigned to certain procurement units to ensure certain goals are being met.

**Thank you** for your time and I request a favorable report for **HB 1214**. I am open to any questions or concerns that you may have regarding this bill.

**HB1214-EHE\_MACo\_OPP.pdf**

Uploaded by: Butler, Alex

Position: UNF



## House Bill 1214

### *Procurement - Transparency and Application to County Contracts*

MACo Position: **OPPOSE**

To: Education, Health, and Environmental  
Affairs Committee

Date: March 31, 2021

From: Alex Butler

The Maryland Association of Counties **OPPOSES** HB 1214. The bill would needlessly require that all procurement contracts using state funds in any form be subject to all state procurement regulations.

HB 1214 redefines the term “unit” in state procurement law to include county government entities. This would subject county procurement contracts that leverage any amount of state money to state regulations causing counties to adopt two separate procurement procedures. Counties often work with the state entity from which they received funds and are already subject to state requirements such as Minority Business Enterprise (MBE) participation goals. However, requiring two separate policies for county procurement would be costly and inefficient.

The bill would also impose several new notice requirements for county procurement contracts that involve the use of state funds. Procurement units must publish notice of specified awards on eMaryland Marketplace within 15 (instead of 30) days from the execution and approval of a contract in excess of \$50,000. Also, within 15 days, a procurement unit must deliver by email and first-class mail to each unsuccessful bidder or offeror a notice stating that the bidder was unsuccessful. Unsuccessful offerors may already request a debriefing, which under current law must be provided at the earliest feasible time. For many counties, new requirements would demand significant additional staff time and effort. Many procurement offices have limited staff, and burdensome requirements such as these would only further strain operations.

Counties have their own procurement laws that are based on the structure and size of each government. Subjecting all procurement operations that involve any amount of state funds to state regulations would force counties to re-write their procurement laws or operate under two separate policies. This would be burdensome and confusing for procurement entities. Accordingly, MACo urges the Committee to provide HB 1214 with an **UNFAVORABLE** report.

# **2021 HB 1214 Procure-Transparency & Application t**

Uploaded by: Robertson, Ellen

Position: INFO

Larry Hogan  
Governor

Boyd K. Rutherford  
Lt Governor



Ellington E. Churchill, Jr.  
Secretary

Nelson E. Reichart  
Deputy Secretary

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.

**GOSBA\_HB1214\_LOC.pdf**

Uploaded by: Small, Minority & Women Business Affairs, Governor's Office

Position: INFO



## GOVERNOR'S COORDINATING OFFICES

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**BILL TITLE:** HB1214- Procurement - Transparency and Application to County Contracts

**DATE:** March 29, 2021

**COMMITTEE:** Education, Health and Environmental Affairs

**POSITION:** **Letter of Concern**

The Governor's Office of Small, Minority & Women Business Affairs (GOSBA) has reviewed HB1214- Procurement - Transparency and Application to County Contracts, and would like share additional information and operational concerns regarding this bill.

### **Bill Summary**

This bill applies State procurement law to any county governmental entity entering into a procurement contract either using State funds or for the benefit of the State. It also requires the Governor's Office for Small, Minority, and Women Business Affairs (GOSBA) to assign a staff member to each State and county procurement unit to observe procurement processes and ensure that minority business enterprise (MBE) goals are met to the best of the unit's capacity. The bill requires specified procurement-related information to be posted publicly, specified notices to be sent to bidders and offerors, and specified information to be included in solicitations. It also alters the timeframes for the filing of bid protests.

### **Concerns**

The Governor's Office of Small, Minority & Women Business Affairs (GOSBA) is charged with connecting Maryland's small business community to greater economic opportunities in both the public and private sectors, while implementing and monitoring small, minority, women, and veteran procurement programs across 70 state agencies.

In its capacity as an oversight agency, however, GOSBA does not function as a procurement unit nor does it perform technical procurement duties akin to those performed by the Office of State Procurement. GOSBA is a small agency having nine employees total whose designated duties span from leadership/upper management, communications/outreach, policy/legislation to compliance and reporting for the MBE as well as the State's two other socioeconomic programs – the Small Business Reserve Program and the Veteran Small Business Enterprise Program.

Thereby, within the State's procurement structure and statute, each respective agency is tasked with implementing Minority Business Enterprise (MBE) law in their day-to-day procurement operations; this includes functions such as development of requests for proposals/qualifications, evaluating bids and performing MBE goal setting determinations for their respective projects/solicitations using GOSBA's best practice guidelines.

Under the proposed legislation, GOSBA's function would significantly expand to not only require hands-on oversight of day-to-day technical procurement operations at the State level, but at the county level as well. It is worth noting that many counties already have established MBE Programs and the requirements of this bill may necessitate an overhaul of said programs.

The massive undertaking proposed by this bill would require significant agency restructuring and the addition of 97-100 new personnel.

**GOSBA respectfully requests the committee consider this information as it deliberates on House Bill 1214.**

Chantal Kai-Lewis, GOSBA, 301-697-9609, Chantal.Kai-Lewis@maryland.gov