

House Bill 193 - State Procurement - Transparency and Procedures

Position: Letter of Information

Committee: House Government, Labor, and Elections Committee

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From: John R. Woolums, Esq.

The Department of General Services (DGS) takes no position on House Bill 193 and is providing this Letter of Information for the Committee's consideration.

This legislation proposes significant revisions to State procurement standards and procedures regarding change orders and contract modifications; bid protests and contract claims; debriefings for unsuccessful offerors; and procurement ethics. HB 193 would add a requirement that all procurement contracts include a requirement for a contract modification to provide an equitable adjustment to compensate a contractor for increases in cost due to changes in the law. The bill would expand certain procurement procedures governing contract claims that currently apply only to construction contracts to all types of contracts. In addition, the bill would extend the deadline for contractors to submit a written notice of a claim from 30 to 60 days.

DGS has concluded that this legislation would have an operational and fiscal impact on the DGS Office of State Procurement (DGS OSP). The extent of the impact is indeterminate because the bill does not specify the maximum amount of money or percentage allowed for contract modifications. Similarly, the bill does not specify the number of times a contract may be modified due to statutory changes.

Expanding the circumstances under which an equitable adjustment is granted would shift a greater portion of that risk to the State, potentially increasing State expenditures and reducing the contractor's incentive to accurately forecast costs at the bidding stage. When a contractor enters into an agreement with the State, both parties assume certain risks related to contract costs. At the time of bidding or submitting an offer, the contractor must predict the total cost of performing the work based on available information and reasonable assumptions. However, actual performance conditions may differ from those anticipated. Based on the type of contract, an equitable adjustment may be negotiated to account for increased costs resulting from unforeseen circumstances, such as changes in project scope or conditions beyond the contractor's control.

Again, DGS is providing this testimony for informational purposes, and the Department looks forward to being of further assistance as the Committee considers this bill.

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