

HB 334 - State Procurement - Constitutional Violations - Prohibited

Position: Letter of Information

Committee: Government, Labor, and Elections Committee

Date: February 10, 2026

From: John R. Woolums, Esq.

The Department of General Services (DGS) appreciates the opportunity to provide this Letter of Information to explain the operational and fiscal effects of this proposed legislation on the Department. DGS appreciates the legislative intent to clarify that no vendor may violate the U.S. or Maryland Constitution and provides the following information for the Committee's consideration.

DGS Office of State Procurement's (OSP) understanding of the newly proposed §13-212.2 of the State Finance and Procurement Article (SFP) is that any vendor responding to a bid or proposal would be required to certify that itself, its divisions, and any affiliates (as defined in this bill) are not currently and will refrain from engaging in any actions that violate the U.S. or Maryland Constitution. DGS OSP can include this certification requirement using existing resources.

OSP has identified a potential unintended consequence of the bill as drafted. The new certification requirement could potentially discourage vendors from choosing to do business with the State, due to the broad definition of "affiliates." A vendor would be required to certify that no entity with which it has a corporate or legal relationship, including an economic relationship or partnership such as marketing or promotion, is engaging or will engage in actions that violate the U.S. or Maryland Constitution. This requirement, by seeking to hold vendors accountable for other businesses' conduct, may disincentivize business decisions to engage with the State.

In addition, redefining "bidder or offeror" to include any "division of the bidder or offeror, even if it is unrelated to the procurement activity" is not clear and may be open to inconsistent interpretation by procurement officers and bidders. OSP notes that bidder and offeror are already defined elsewhere in statute under SFP §11-101.

DGS OSP can implement SFP §13-230 with minimal fiscal or operational impact. A mandatory contract provision already exists that would accomplish this intent: Code of Maryland Regulations (COMAR) §21.07.01.22 states that the Contractor "shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract."

Lastly, OSP notes that both SFP §13-212.2 and §13-230 as proposed by this bill would be applicable to bids and proposals on contracts of any value, including Small Procurements typically valued at zero to \$100,000. Small Procurement procedures are a streamlined method of procurement, and include significantly fewer contract provisions than what is required for higher value procurements (see COMAR 21.05.07.06).

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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