



BILL: House Bill 1353 Omnibus Procurement Reform Act (“OPRA”) of 2022

COMMITTEE: House Health and Government Operations

DATE: March 8, 2022

POSITION: Letter of Concern

Upon review of House Bill 1353, Omnibus Procurement Reform Act (“OPRA”) of 2022, the Maryland Department of General Services (DGS), provides these comments for your consideration.

Passage of this bill would result in **significant fiscal and operational impacts** on the DGS Office of State Procurement (OSP). Currently, the amount of frivolous protests and appeals that are filed by bidders and offerors, are filed solely because they were not selected to be awarded a contract. This results in a significant and burdensome workload for the Office of State Procurement. House Bill 1353 would require Procurement Officers, in coordination with the Office of the Attorney General, to gather documents needed in the discovery phase of an appeal.

While protests can be appropriate, it is not uncommon for a protest to claim the procurement determination was arbitrary and capricious, solely because the contract was awarded to another vendor. Passage of this bill would allow **bidders or offerors to recover fees for attorneys, expert witnesses, and technical consultants. Currently, the State does not charge a filing fee for bidders or offerors to appeal a denial of a protest. Some protesters do not have standing to file a protest but could file an appeal in order to try to recover their costs of submitting a bid or proposal if they are not awarded a contract.** These scenarios would all substantially increase expenditures for DGS and the State of Maryland.

The **current and consistently used procurement process already requires Procurement Officers to make written explanations for why each step happened during a procurement.**

These steps may include:

- Why a bidder/offeror was selected for an award
- How an evaluation was conducted
- Why a bid was unresponsive
- Why a bidder/offeror was not responsible
- Why a proposal was not reasonably susceptible for award
- When it is necessary to cancel a payment



House Bill 1353 prohibits a Procurement Officer from canceling a procurement with an ongoing protest thus increasing the State's cost. The State would be unable to exit the contract and expeditiously obtain bidders for a new contract with competitive terms. This expanded and prolonged timeline caused by the protest would also impact potential other vendors that would be forced to wait for the conclusion of the protest. **The vendor would not be able to hold the prices they advertised thus forcing them to take on other contracts and be unavailable to work with the State.**

The OSP is already required to post contract awards electronically (on eMMA) within 30 days, which fulfills some of the requirements of the bill. However, some of the information proposed to be posted is **proprietary, and confidential so that procurements can remain competitive.** It also does not make sense to publish the Minority Business Enterprise (MBE) Participation Schedule with the award. The MBE Participation Schedule is part of the bid/proposal and denotes a contract between the prime and subcontractor; it is **not part of the contract between the State and the prime contractor. The State's role is limited to confirming that MBEs are being utilized by the prime as stated in the bid/proposal and tracking the MBE compliance through the monthly reporting by the MBE, the subcontractor and the prime.**

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