Office of State Procurement

2019 Legislation re. Procurement

Agency Training
Why Should We Care?

- State law has the final say in disputes

- State law sets the outer limits on what’s OK (rules, policies, procedures fill in the gaps)

- Because it’s so foundational, it can (and should) inform and affect everything built on top of it

- Legislation reflects and affects the public mood re. procurement

- General tone of firm skepticism re. contracting (less of a focus in 2019 so far though)
What Passed

**Title 38 / Title 48 Changes**

1. **SB 200 by Sen. Cortez** (Act 261)

   - Affects political subdivisions of the State (Title 38 only, but not State w/ 38).
   - Authorizes a limited pilot program of “A + B” bid method contracting
   - Bundles project duration into cost as a bid evaluation using an estimated impact ‘cost’ per day – allows use of a technical element in bid process.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>A. Bid Price</th>
<th># Days</th>
<th>B. Day “Cost” ($1,000 / day)</th>
<th>Total “Cost” (Basis for Eval.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alpha</td>
<td>$14,000</td>
<td>5</td>
<td>$5,000</td>
<td>$19,000</td>
</tr>
<tr>
<td>Bravo</td>
<td>$10,000</td>
<td>10</td>
<td>$10,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>
What Passed

2. SCR 113 and SR 188 by Sen. Gary Smith

- No immediate effect on procurement.

- Create the Public Works Contracts Task Force to study the feasibility of increasing the contract limit applicable to Public Works contracts (Title 38).

- Current limit $157,700 ($150,000 from 2015 indexed to inflation).

- Committee includes Senate, FP&C, AGC, ABC, engineers, PJA, and LMA.

- Committee to meet, study and report back to the Legislature for next year’s Session on whether limit should be raised in light of construction inflation.

- If legislation follows next year, State agencies and poli. subs. would be able to do larger projects without having the projects classified as Public Works.
What Passed

3. **SCR 122 by Sen. Morrish**
   - Affects DOTD
   - Directs DOTD to “expedite procurement, planning, engineering, design, and construction of a new I-10 Calcasieu River Bridge” next to the current bridge.
   - Describes that “it is imperative that DOTD study the conditions, needs, issues, and funding relative to the procurement, planning, engineering, design and construction” of such a new bridge, “and to recommend any action considered necessary and appropriate.”
   - Further directs DOTD to “seriously consider undertaking a public-private partnership” for the new I-10 Calcasieu River Bridge project as an alternative to the use of conventional methods.
What Passed

**Title 39 Changes**


   - Affects all agencies and political subdivisions governed by Title 39
   
   - **Technical only** - corrects the statutory reference used to define early learning centers as “Private Procurement Units” from DCFS’ statute to LDOE’s.
What Passed


- Codifies / replaces E.O. JBE 2018-15 by Governor Edwards
- Affects all “executive branch agencies” governed by Title 39
- Requires all bidders and contractors to certify that they are not engaged in a boycott of Israel, and that they will not do so during the term of the contract.
- Not applicable to procurement contracts with a value of less than $100,000 and for vendors with fewer than five employees.
What Passed


Contract/PO boilerplate language being added to LaGov:

IN ACCORDANCE WITH [R.S. 39:1602.1](#) EXECUTIVE ORDER NUMBER JBE 2018-15, EFFECTIVE MAY 22, 2018, FOR ANY CONTRACTS WITH A VALUE OF $100,000 OR MORE AND FOR ANY VENDOR WITH 5 OR MORE EMPLOYEES, THE VENDOR CERTIFIES THAT IT IS NOT ENGAGING IN A BOYCOTT OF ISRAEL AND IT WILL, FOR THE DURATION OF ITS CONTRACTUAL OBLIGATIONS, REFRAIN FROM A BOYCOTT OF ISRAEL.

Professional Services contract / RFP templates are being updated as well. Agencies contracting within their DPA must ensure their own compliance with the Act.

- Updates various provisions re. the State Use Program to comply with Federal law, regulations and court orders, and make other cleanup edits:
  - Replaces “sheltered workshops” with “supported employment providers” (SEPs)
  - Requires SEPs offer “gainful, competitive, integrated employment, training and rehab. svcs”
  - Merges Title 38 and 39 provisions for clearer consistency
  - Requires that goods/services be “equal in quality and reasonable in the rate charged”
  - Eliminates references to “severe” disabilities
  - Adds behavioral, developmental, intellectual and sensory disabilities
  - Deletes statutory language for an inactive program under LWC for the Blind
  - Requires the State Use Council to conduct an RFP every 5 years to select the Program’s nonprofit coordinator (which has always been EDS), to provide central training, administration and support services for the SEPs.
What *Didn’t Pass*

1. **HB 63 by Rep. Bouie**
   *Require that all Title 39 contractors comply with the Equal Pay for Women Act.*
   (rejected in Committee)

   *Require local government (Title 38) agencies intending to contract for design professional services to advertise the project, accept applications from licensed design professionals, and hold a public hearing, similar to the Selection Board process used by State agencies through FP&C.*
   (never taken up in Committee)

3. **SB 144 by Sen. Price**
   *Forbid the use of purchasing cooperatives administered using the lead agency model (such as NASPO ValuePoint and U.S. Communities/Omnia), and require that only “sole proprietor” type cooperatives (such as MMCAP, Sourcewell, TIPS, and PCA) be allowable for use by Title 39 agencies.*
   (withdrawn by the author)
Why Should We Care?

- Some failed bills reflect good ideas.
- Some, unfortunately, do not.
- Some reflect a flawed or partial understanding of how the procurement process works.
- Some will be back next year.
- Some will be State law one day.
Office of State Procurement

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