Commission to Modernize State Procurement – Regional Meeting
June 28, 2016
10:00 a.m.
Easton Fire Hall, 315 Aurora Park Drive, Easton, MD 21601

Commissioners in Attendance

Gail Bassette, *Secretary, Maryland Department of General Services*
Sheila McDonald, Esq., *Executive Secretary, Maryland Board of Public Works*
John Gontrum, *Assistant Comptroller, Comptroller of Maryland*
Michael Zimmerman, *Director, Maryland Department of Transportation, Office of Procurement*
Eileen Straughan, *President, Granix, LLC.*
Jimmy Rhee, *Special Secretary, Maryland Office of Minority Affairs*
Delegate Dan Morhaim, *District 11, Member of the Health and Government Operations Committee*
Al Bullock, *Chief of Staff, Maryland Department of Information Technology*
John Molnar, *Co-founder, Integrity Consulting*
Delegate Christopher West, *District 42B, Member of the Health and Government Operations Committee*
Marc Nicole, *Deputy Secretary, Maryland Department of Budget & Management*

Welcome

Secretary Gail Bassette presided over the meeting. Gave opening remarks over the purpose of the Procurement Commission. Want to increase the number of businesses who want to participate in the procurement process. Want to hear from the vendor community to hear concerns and suggestions. Most interested in your suggestions on how to improve the process.

Public Comment

Speaker: Tim Perry and Phil Andrews - Client: Daycon Products

- Phil Andrews (attorney) - Need improved monitoring and enforcement of State Finance & Procurement Article Section 14-103 and the priority preferences. 2 years ago UMD College Park had a janitorial supply contract. The RFP required the awardee to purchase from BISM those listed products. Some of those items were assembled by BISM employees, but for other items, BISM went out and purchased the items and then sold them unaltered (maybe repackaged) to the contractor. That is an issue under the statute.
- 2002 - BISM v DGS case arose from lawsuit that BISM filed against DGS b/c DGS refused business to them for office supplies. BISM demanded they be awarded the contract without competition. BISM said we can supply these items to you. DGS said "no - these are not manufactured or assembled by the Blind." Court of Appeals agreed.
- Opinion letter from August 2014 by AAG Dan Friedman, Counsel to the General Assembly - came to the same conclusion as Court of Appeals. Simply obtaining or procuring from a 3rd party manufacturer does not meet the definition of "provided by BISM".

Speaker: Monica Best James, Greg Khalifatt (BISM)

- June 14th appeared before the commission - questions arose from that meeting, we provided written testimony (see attachments) and want to also provide oral testimony

- There was an audit conducted - during that period they thoroughly examined what BISM does. As far as we were told, everyone was happy with the results of the audit.
- Costs of all the items examined was $1.5 million less if purchased by BISM. BISM provides more than $2 million in training programs. Revenue generated supports rehab and training.
- Total awarded to preferred providers was $733 million. A little more than $10 million is BISM (1.4%).
- Greg Khalifatt - "passed through" items - that is an insignificant amount of our business. The vast majority of our products are significantly repackaged (taking industrial quantities and shrinking to smaller sizes, relabeling etc…), manufactured or assembled by the blind.

Speaker: John Stultz, representing SAS

- Entity resolution - states are using SAS - we encourage you to leverage the technology, use BMPs to bring data together to identify businesses who are defrauding the government. In the software industries, it presents an unfair playing field. With a little effort, we could identify the fraudsters before they compete for a contract.
- Our written testimony talks about regulations that get in our way.
- Thinks the state should model the federal system for software contracts. There is a period where potential bidders give oral testimony on what the solution should be (between IFB and RFP phase). We pitch our case before the RFP is written, and then the State can figure out if they got it right before they write the RFP.

Speaker: Jerry Chiat - V.P of Claim Promotions

- Concern with E-MD Marketplace. We have only gotten 2 bids through eMM but bid hundreds of times. Lost once to England and once to company in China. We have attended group meetings with DGS and a focus group on contracts being awarded to companies outside of MD.
- Our company bid on an item that was a patented item. That bid did not go to that company. It was remanufactured and came from out of country. This goes to having knowledge about what the company is all about. The agencies don't know enough about the products and where they come from. Did the agency know that the product was patented and remanufactured

Speaker: Sharon Russell - National Association of Counties. Sr. Director for U.S. Communities, National Cooperative Purchasing Program.

- Urge the committee when considering procurement practices to continue to allow the option of cooperative purchasing as one opportunity for state agencies. Not all cooperative purchasing groups are the same.
- National Governors Association is one of our key sponsors. We have a rigorous process. Our lead agencies go out to bid, they are utilizing a standard that is higher than an agency would need. We have a national evaluation team that reviews each bid. We have an independent audit agency that looks at all suppliers, looks at contracts quarterly. Supplier must give the best pricing to any agency who is one of their users. Only have 40 suppliers. We are a cooperative purchasing program that chooses only suppliers who do

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what they say they will do. Our suppliers must commit to using local sub-contractors and MBE/Women owned business.

- NARCAN - epidemic of overdosing. US Communities worked with locals to get a 40% discount on this product. Just in K-12, public schools saved $49 million by ordering through US communities. In MD, those schools saved $3 million.
- We re-compete our contracts annually and review them quarterly to ensure they are meeting all requirements.

Speaker: Chris Costello - Rep Maryland Council of Engineering Companies.

- More centralizing would be helpful
- Have a lot of regulations that cause the Procurement Officer to question themselves. They should be able to use their own common-sense to make their own decisions
- Standardization of contracts
- Submit responses to RFP and RFQs electronically
- Only state in the Union that has a lifetime prohibition for someone who has worked on a project and then can never again bid on any future aspect of that project. Any company that individual goes to work for can never bid on that project. Hard for engineering firms to keep track of where their employees previously worked and every project they ever worked on. Prefer a 2 year non-compete (2 years after bid and awarded, that person can then bid on the project/specification)
- MDOT doesn't allow release of the firms that are short listed on the reduced candidate list for design-build contracts. We want to know who those 2-3 firms are so we can market ourselves to those 2-3 firms. Engineering firms are competitors but also work together quite a bit.

Speaker: Gilbert Dissen - Principal of Dissen & Juhn Company – representing Associated Builders & Contractors (ABC)

- Here today for Associated Builders and Contractors. ABC represents the construction industry and 1400 members.
- Standardization of bid documents.
- Award Criteria - needs to be greater clarity and transparency on the criteria. What is the basis of the award.
- Inconsistency in requiring MBE Compliance. We've lost bids to some companies who offered no MBE requirement, but have conversely been told that if you don't fully comply with the MBE requirements, don't bother bidding
    - MBE participation - allow 3 days to submit MBE information after submitting bid.
    - Replace % for dollar value for MBE participation on bid forms. Prices change in the hours leading up to the submittal. If trying to achieve a %, that is a fluid process, always recalculating that %, a lot easier if it required a specified dollar amount
    - Standardize the MBE forms, requirements and practices.
- Subcontractors have to wait to be paid when the general contractor hits a milestone. Release the milestone payments earlier, to facilitate payment to subcontractors.
- Greater use of electronic bidding.
- eMM is often perceived as difficult to use and unreliable.

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Speaker: Bernard Cheezum - VP of Willow Construction LLC (Easton, MD)

- eMM is an impediment to business. Not business friendly. Delaware's system is much more user friendly. Ability to submit bids electronically would be better. Most projects not set up to receive bids electronically.
- MBE goal - they have flexibility in the goal on construction projects. Our experience is that they should be using that flexibility more. There are sub-contractors for MBE, but most won't come to Eastern Shore. It's very difficult to get the waiver. What constitutes a good faith waiver is not clearly defined. Federal government has a standard for what constitutes a "good faith effort" in obtaining a waiver. Considering adopting their standard.
- MBE forms - ability to turn those forms in after the bid would be beneficial to us and the Procurement Officers. Agree with prior speaker that the forms should only require a dollar amount, not a % for MBE.
- Provided a letter/handout for the commission

Speaker: Mary Marlowe - Kohler Equipment -outdoor equipment

- Awarded a state-wide bid on lawn mowers. The very people we were bidding against were all awarded contracts. Why are multiple companies being awarded the contract?
- Response from Suzette Moore, DGS Procurement, clarifying multiple awards

Meeting Adjourned at 11:27 a.m.

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