

FROM

NAME & TITLE	Chichi Nyagah-Nash, Director
AGENCY NAME & ADDRESS	Department of General Services 200 N. Holliday Street, Rm 800
SUBJECT	City Council Bill 21-0068

CITY OF BALTIMORE

MEMO



DATE:

June 21, 2021

TO The Honorable President and Members of the City Council  
 City Hall, Room 400, 100 North Holliday Street

**Position: Support with Amendments**

The Department of General Services is in receipt of and reporting herein on City Council Bill 21-0068: Curing Mistakes in Bids.

**Background**

This bill is intended to provide vendors with the opportunity to update bids identified with minor irregularities or defects, and allow the Procurement Agent ability to cure and address identified non-substantive errors under certain conditions.

**Considerations**

The bill presents a fair number of curative avenues for prospective bidders and associated bids, which may reduce the amount of bids that are rejected from consideration or award due to a technicality. Several actions or processes within the § 47-4 “Mistakes in Bids” may benefit from amendment, or provision of clarification on select terms.

DGS would request further clarification of criteria (III) as defined under § 47-4 (B)(1), within the proposed bill. The criteria for discovery of mistakes during the bid opening period, specifically, that a Procurement agent may identify a bid "is unreasonably lower than other submitted bids", raises two potential concerns.

- First, the term “unreasonably” is not clearly defined, and may lend itself to subjective evaluation. This may have been intentional to ensure the bill was not too prescriptive and allow the Bureau of Procurement ample space to formulate policy; there would be significant benefit in understanding whether this was the intention or expectation.
- Second, the curing action for a “unreasonably” low bid identified within the legislation may, unintentionally, arm bidders with added information that provides a competitive advantage to them in the bid process. The bid amount should be considered substantive, by definition. If the Procurement Agent notifies a low bidder that their bid is “unreasonably” low, their correction would necessarily result in an increase to their bid, and the winning low bid to the contract could come at a significant cost.

Additionally, DGS would request development of additional language within § 47-4 (C), “Mistakes discovered after bid”, to include additional parameters that are not subject to change, other than just the bid amount or price. City contracts are developed to ensure that agencies are receiving the best price or value on the basis of a defined scope of services, dates of service provision, service hours or scheduling, performance commitments, material and product definitions, or associated warranties. The bill intends to provide for only minor, non-substantive curative actions, to ensure the City does not lose good bids due to a technicality. DGS would request confirmation that none of the above terms are identified as subject to change, or considered minor to the provision of the goods or services, without consultation and agreement from appropriate agency personnel.

Finally, the Procurement Agent (City Purchasing Agent), within the Department of Finance’s Bureau of Procurement, is charged with administering procurement bid processes for the City’s many goods and services contracts. DGS would have interest in confirming that the scope of this bill is intended to focus solely on the identified goods and services contracts subject to the City Purchasing Agent’s immediate oversight, noting that the Bureau of Procurement is not charged with administration of professional service contracts or architectural or engineering contracts.

### **Fiscal Impact**

The bill should not have any detrimental fiscal impact; this may be contingent upon the amendment to the bill or subsequent administrative policy or procedures, to ensure that select terminology or criteria identified above are further defined, and that “non-substantive” changes to bid submissions are carefully examined prior to curing action or determination by the Procurement agent.

### **Amendments**

DGS understands and agrees with the intention of the bill, and would identify support conditional on exploration of the following changes:

- Addition of language to detail how the “unreasonable” price threshold is defined, or requirement for the Bureau of Procurement to define this through internal administrative policy.
- Addition of language to ensure terms within a contract and resulting bid are not determined as “non-substantive” or minor, without explicit discussion and agreement with appropriate agency personnel responsible for contracting for the goods or services.

For the reasons identified above, the Department of General Services supports City Council Bill 21-0068, with amendments.

If you have any questions, please do not hesitate to contact Director Chichi Nyagah-Nash at [chichi.nyagah-nash@baltimorecity.gov](mailto:chichi.nyagah-nash@baltimorecity.gov) or (410) 396-3704.

CNN/bb

PP *Eric Shuler*

Chichi Nyagah-Nash  
Director