

H. Raymond

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| FROM | NAME & TITLE | Henry Raymond, Director of Finance | CITY of BALTIMORE MEMO |  |
| | AGENCY NAME & ADDRESS | Department of Finance Room 454, City Hall | | |
| | SUBJECT | City Council Bill 21-0068 – Curing Mistakes in Bids | | |

TO

DATE:

The Honorable President and
Members of the City Council
City Hall, Room 400

June 22, 2021

Position: Oppose

The Department of Finance is herein reporting on City Council Bill 21-0068, Curing Mistakes in Bids, the purpose of which is to allow the City Purchasing Agent to waive minor irregularities in bids.

Background

Currently, when there are irregularities in bids, the Bureau of Procurement assesses whether the irregularity is immaterial. For those irregularities that are found to be immaterial, a clarification is allowed. However, for those irregularities that are found to be material, Procurement will consult with the Law Department on whether to allow clarification.

This legislation would establish procedures for correcting bids with minor irregularities that are discovered before bid opening, during the open bidding period, and after bid. A minor irregularity is defined in the legislation as an irregularity that has an immaterial or inconsequential impact on the bid or proposal. All corrections made during the open bidding period or after bid must be reviewed and approved by the City Solicitor.

Fiscal Impact Analysis

The Department of Finance does not anticipate a cost for the City as a result of this legislation.

Other Considerations

The Department of Finance has several concerns with this legislation that have been raised with the Office of the City Council President and are outlined below.

First, the legislation defines “minor irregularity” as “...an irregularity that is merely a matter of form and not of substance or pertains to an immaterial or inconsequential defect or variation in a bid or proposal...”. This definition allows for a subjective interpretation of what is “immaterial” or “inconsequential,” which would make it challenging to implement. Finance recommends providing more detailed guidance on what would constitute “immaterial” or “inconsequential” to ensure that there is objective interpretation and implementation across all bids.

Second, the City Purchasing Agent does not have control of bids until after the opening of bids. That is instead overseen by the Office of the Comptroller. Therefore, Finance recommends providing the authority described in § 47-4. A. to the Office of the Comptroller.

Third, § 47-4. B. 2. provides the City Solicitor authority in the procurement process, which should fall under the City Purchasing Agent. In addition, Finance defers to the Law Department on whether the mandated review and approval by the City Solicitor of any bid corrections may be a conflict of interest since the Solicitor is a member of the Board of Estimates

Finally, this legislation would take effect 30 days after enactment, which would be extremely difficult to implement. Various processes and procedures need to be established to effectively implement this legislation, as well as communications with all vendors to make them aware of the law and processes. Finance recommends extending the implementation timeline to 90 days.

Beyond these concerns, Finance would note that the City already conducts several of these actions via the City Purchasing Agent, and the Acting City Purchasing Agent has enacted several policies and processes, based on best practices, to address these concerns, such as the “Procurement Officer Determination” form. In addition, the City recently issued a request for proposals to review the City’s procurement processes, which will include review of the issues this legislation aims to address and develop recommendations based on best practices.

Conclusion

This legislation would allow the City Purchasing Agent to waive minor irregularities in bids based on certain criteria and processes. However, Finance has several concerns regarding the implementation of the bill.

For the reasons stated above, the Department of Finance opposes City Council Bill 21-0068.

cc: Natasha Mehu
Nina Themelis