

# 2018 Maryland State Procurement Law Update

By Ryan Spiegel

Contractors who pursue business opportunities with Maryland's State government should take notice of some new procurement laws that were passed in the recently-ended 2018 General Assembly Session in Annapolis.

The following bills have already been signed into law by the Governor:

## **HB 858/SB 251 - Minority Business Enterprises - Required Regulations - Liquidated Damages Prohibition**

This bill prohibits State agencies from assessing liquidated damages against contractors under an indefinite delivery contract or an indefinite performance contract if the agency fails to request a task for which a Minority Business Enterprise ("MBE") was either named on the participation schedule or named and qualified based on the subcontractor's existing North American Industry Classification System ("NAICS") code.

## **HB 1622/SB 383 - Video Lottery Terminals - Minority Business Participation Goals - Sunset Extension**

This bill extends the existing MBE participation goals applicable to the State's video lottery industry, which was otherwise set to expire, by one additional year to July 1, 2019. Video lottery facility applicants and licensees are subject to the MBE goal set in State law and as established by the Special Secretary for the Office of Small, Minority, and Women Business Affairs ("GOMA").

## **SB 492 - Procurement - Board of Public Works - Workforce Health Care Study**

The legislation requires the Board of Public Works ("BPW") to collect certain information regarding employee health insurance coverage by construction contractors on State projects, but only during a brief window of time. Any construction companies that pursue State government contracts via competitive sealed bidding *during the third quarter of calendar year 2018* should be prepared to provide information on their employee healthcare coverage as part of their bids and responses to state agency solicitations, including: whether they or their subcontractors provide such coverage on projects subject to prevailing wage laws, the type and scope of coverage, the average percentage of monthly premiums paid by the employer and by the employees, the average deductible in each health care plan offered, the percentage of total coverage costs paid by an insurance company versus the employee, the percentage of total Social Security wages, and the total amount spent on employee healthcare by the employer in the year preceding the bid.

Notably, nothing in SB 492 addresses whether the information will remain confidential or will be anonymized before it is compiled into a report to be presented to the General Assembly for their review. Contractors should consider steps necessary to protect any such information that they would consider proprietary or sensitive when submitting bids containing this health care coverage data.

## **HB 1088 - State Procurement - Information Technology - Nonvisual Access**

This bill requires State agencies to adopt new nonvisual access procurement standards, consistent with federal standards, by January 2020, to ensure that visually impaired individuals can access the same information and opportunities. The State already imposes standards that are similar to many – but not all – of the federal standards established by Section 508 of the federal Rehabilitation Act of 1973. This law updates those state standards. All State procurement contracts must eventually include a provision related to nonvisual access barriers consistent with the new standards.

Under existing law, IT contracts are exempt from nonvisual access requirements if the cost of modifying the technology would increase the price of the procurement by more than 5%. This bill changes that threshold for the exemption to 10%.

A very similar bill, SB 286, was also passed by the General Assembly this year. It includes many of the

same requirements for the state's standards to be better aligned with the federal Section 508 standards, but it sets the exemption threshold for IT contracts at 15%. Both HB 1088 and SB 286 were signed into law by the Governor, so it remains unclear how their different thresholds will be applied.

### **SB 245 - Procurement – Security Requirements – Forms**

This bill requires the BPW to issue new surety bond forms for security for fixed-price and multi-year contracts. For multi-year contracts in particular, the forms must provide for annual and renewable contracts. This approach may allow payment of security only on the base contracts, rather than on the full value of the entire multiyear contract, potentially reducing the amount of security payments by small businesses that bid on State contracts. This change would take effect October 1.

Contact Paley Rothman's Government Contracting practice group for any questions regarding Maryland state government procurement matters.