

## State Government Purchasing: A Review of Recent Statutory Changes

**CONCLUSION:** Effective January 1, 2018, H.B. 1106 and H.B. 1109 altered the operation of public procurement within the state through changes that included the expansion of the Public Procurement Review Board's (PPRB) purview to include local governing authorities, the creation and incorporation of new procurement methods, such as electronic bidding and reverse auctions, as well as administrative changes that required recalculation of time requirements to complete the contracting process. These alterations have resulted in increased work demands of both the PPRB and DFA support staff in reviewing contract packet submissions, lessened the flexibility of PPRB to respond to specific public entity requests for contract review, and created a perception of duplication of oversight responsibilities by local governing authorities.

### 2017 Amendments to State Procurement Law

#### Background:

PPRB is the state level oversight and approval body responsible for monitoring purchases made by state agencies and governing authorities as defined in MISS. CODE ANN. § 31-7-1 (1972), and all personal and professional service contracts involving the expenditure of funds in excess of seventy-five thousand dollars (\$75,000).

MISS. CODE ANN. Section 5-3-72 (1972) statutorily requires PEER to evaluate on a biennial basis the procurement process used by all state agencies, including, but not limited to, the contract review, reporting, and record keeping requirements in MISS. CODE ANN Section 25-9-120 (1972) and the bid requirements in Section 31-7-13. Upon completion of its evaluation, the PEER Committee shall submit a report to the Legislature with its recommendations for improving the procurement process.

#### H.B. 1106:

- amended MISS. CODE ANN. § 31-7-13 (c) (v) (1972) to require agencies and governing authorities to provide, in cases in which a procurement would exceed \$50,000, a potential supplier with the ability to submit a competitive bid electronically; but
- makes exclusions for agencies or governing authorities based on technical capabilities and population size.

#### H.B. 1109:

- established procurement best practices for Request for Proposals (RFP) and Request for Qualifications (RFQ) use;
- abolished Personal Service Contract Review Board and transferred its authority and responsibilities for personal services to the PPRB; and,
- made reverse auctions the preferred method of procurement (excluding individual state institutions of higher learning) for commodities and certain other items or services designated in Section 31-7-13 (1972) when such procurements exceed \$50,000.

Prior to H.B. 1109, the Personal Service Contract Review Board was responsible for reviewing and approving personal service contracts in excess of \$75,000.

#### Effects of H.B. 1106 and H.B. 1109 on the State's Public Procurement Process:

- PPRB's purview expanded to include approximately 100 state agencies, 82 counties, 298 incorporated municipalities, and 140 school districts;
- PPRB must now review and approve all commodity and equipment procurements in excess of \$500,000, contracts making use of alternative procurement process other than reverse auctions, and personal service contracts in excess of \$75,000;
- purchasing entities must now adhere to a more formalized PPRB reporting and scheduling timeline; and,
- reverse auctions are the preferred procurement option for all public purchasing entities, but has been criticized as duplicative oversight and questionable benefit in particular applications.

The Attorney General opined on June 9, 2017 that "Purchasing Entity" includes all entities that are subject to Section 31-7-13. Effectively, this opinion places local governing authorities, i.e. board of supervisors, municipal boards, school districts, etc. under PPRB oversight.

## Public Purchasing Entities Surveyed:

- In order to assess the impact of H.B. 1106 and H.B. 1109 on the state's procurement processes, PEER surveyed fifty-four purchasing entities across the state:
  - there was a general perception among public purchasing professionals that reverse auctions increased the time necessary to make a procurement, decreased the number of vendors willing to participate in public contract offerings, and did not produce noticeable price savings as compared to the previous competitive bid selection method; and,
  - a general perception that the new RFP and RFQ best practices standards had increased the time necessary to complete a procurement, decreased vendor participation in the RFP and RFQ process, and had no noticeable price savings effect compared to the previous RFP and RFQ guidelines.

## Reverse Auction Overview:

In a traditional auction, interested buyers bid against one another to purchase an item, or items, until the one willing to pay the highest remains. However, reverse auctions are the opposite of traditional auctions. As described by the National Association of State Procurement Officials (NASPO) *Reverse Auctions: A Roadmap for Success*, reverse auctions are a procurement tool that allows for multiple vendors to compete in real time, in a fixed duration bidding event. During the reverse auction process, the buyer will receive decreasing offers from prospective sellers for a particular product. The auction ends at a predetermined time, and at the conclusion of the reverse auction the item is purchased from the seller offering the lowest price.

## Factors Needed for a Successful Reverse Auction:

Reverse auctions offer the buyer and seller of goods a chance for better pricing outcomes in a more competitive and transparent environment, while simultaneously lowering procurement costs and increasing procurement personnel efficiency. However, there are also some limitations to using reverse auctions if they are utilized inefficiently, such as increased time and resources to prepare the reverse auction and establish the starting bid or potentially limiting the number of vendors willing to participate in the bidding process. When conducting reverse auctions, public purchasing professionals should consider and incorporate ten factors into their reverse auction process, which include:

- market conditions;
- nature of the goods being sought;
- selecting a reverse auction model;
- preparing a request for qualification;
- developing auction rules;
- pre-qualification and invitations;
- education, communication and training;
- conducting the reverse auction;
- follow-up activities; and,
- maintaining buyer/supplier relationship.

## Recommendations for Improving PPRB's Oversight Role:

- The Legislature should amend MISS. CODE ANN. Section 27-104-7 (1972) and relevant sections of MISS. CODE ANN Section 31-7-1 et seq. (1972) to clarify the authority of the Public Procurement Review Board (PPRB) to:
  - allow the Board to delegate to the DFA staff approval or reverse auction exemption requests under certain circumstances; and
  - provide the Board with authority to waive certain best practices found in MISS. CODE ANN. Section 31-7-401 through 31-7-423 (1972) when in the best interest of the state and when the Board has no concerns regarding competition, transparency, or fairness.
- The Legislature should amend relevant sections of MISS. CODE ANN. Section 25-53-1 et seq. (1972) and Section 31-7-1 et seq. (1972) to require the Department of Information Technology Services (DITS) to review reverse auction exemption requests from governing authorities when procurements are information technology-related.
- The Legislature should amend MISS. CODE ANN. Section 31-7-13 (1972) and MISS. CODE ANN. Section 27-104-7 (1972) to clarify that the PPRB has authority to adopt rules and regulations regarding the reverse auction requirement for state agencies and governing authorities.
- The Legislature should amend MISS. CODE ANN. Section 27-104-7 (1972) and MISS. CODE ANN. Section 25-53-5 (1972) to require the PPRB and the DITS to evaluate jointly on a biennial basis the procurement process utilized by all state agencies. In addition, the Legislature should repeal MISS. CODE ANN. 5-3-72 (1972) that currently requires the Joint Legislative PEER Committee to conduct such a biennial review.

*DFA staff reviewed this report and elected not to submit a formal agency response.*



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