

Legislative Analysis



UNSUCCESSFUL BIDDER PROTEST POLICY

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4462 (proposed substitute H-1)
Sponsor: Rep. Steve Marino

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4658 (proposed substitute H-1)
Sponsor: Rep. Mari Manoogian

Committee: Commerce and Tourism
Complete to 5-24-21

SUMMARY:

House Bills 4462 and 4658 would amend the Management and Budget Act to change provisions concerning bidders for certain state contracts. House Bill 4462 would require the development of a process for protesting award decisions for contracts of \$25.0 million or more, and House Bill 4658 would require procurement contract awards to be publicly announced and specified information to be posted online regarding the awards.

House Bill 4462 would require the Department of Technology, Management, and Budget (DTMB) to develop a protest process for an unsuccessful bidder to protest an award decision for a contract of \$25.0 million or more under the act. The process would have to be clearly stated on DTMB's website and referred to in all requests for proposals issued by DTMB. The process would have to include all of the following:

- The time and manner in which the unsuccessful bidder must file the protest. The time to file a protest could not be less than 10 business days after the date of the decision.
- The specific information that must be included in the protest.
- The specific statute, procurement policy, or solicitation instruction that was violated in the award decision.

If the process provided for a protest period extension, obtaining information under the Freedom of Information Act (FOIA) would not be a valid reason for a protest period extension.

Failure of a bidder to do any of the following would not be a valid reason to protest an award, and any protest based on these circumstances could be rejected without further investigation:

- Properly follow solicitation submission instructions.
- Properly and completely submit a solicitation response to DTMB by the due date and time.
- Provide mandatory samples, descriptive literature, or other required documents by the date and time specified.
- Provide a required deposit or performance bond by the date and time specified.
- Submit a protest within the time stipulated in the solicitation.
- Properly use the submission method, including electronic systems, specified in the solicitation submission instructions.

The above would not be an exclusive list of reasons a protest could be denied. The chief procurement officer or his or her designee could deny a protest for other reasons established in policy.

The chief procurement officer, or his or her designee, would be have to investigate and provide a written response to the protesting party to all protests that meet the requirements of the bill. DTMB could not finalize an award of a contract or purchase order under a disputed solicitation until it issued a final decision on a timely protest. However, if there were a threat to public health, safety, or welfare, or danger of immediate and substantial harm to state property from delay in making an award, then the chief procurement officer could proceed with an award and document the justification for doing so.

Proposed MCL 18.1266

House Bill 4658 would require DTMB, and all state agencies to which DTMB has delegated its procurement authority under the act, to publicly announce all procurement contract awards resulting from publicly posted solicitations within 48 hours of awarding the contract. The 48-hour period would exclude weekends and public holidays. DTMB or the procuring state agency would have to make available on a website at no cost both of the following regarding the procurement contract award:

- The name of the vendor that was awarded the procurement contract.
- The total dollar amount of the procurement contract award.
- For procurement contracts of more than \$5.0 million, a copy of the winning bid, excluding any trade secrets or proprietary information, and a written explanation of the legal grounds supporting the exclusion of trade secrets or proprietary information.

Proposed MCL 18.1262a

The bills are tie-barred to one another, which means that neither bill could take effect unless both bills were enacted.

FISCAL IMPACT:

House Bill 4462 would have no fiscal impact on DTMB, other state departments and agencies, or local units of government. DTMB currently has an established process for vendor protests and it is posted on the department's website. Any additional information required by the bill to be made available on the website would have no additional cost.

House Bill 4658 would have no fiscal impact on DTMB, other state departments and agencies, or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.