
March 1, 2022

The Honorable Shane E. Pendergrass
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, MD 21401

Re: Letter of Information – House Bill 767 – Emergency Procurement – Contracts – Term Length and Renewal

Dear Chair Pendergrass and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on House Bill 767 but offers the following information for the Committee's consideration.

The initial term of an emergency contract is currently limited to a maximum of one year; however, the MDOT is able to exercise renewal options and/or contract modifications following review and approval by a control agency, when applicable, and the Board of Public Works.

House Bill 767 limits the term for a contract awarded through an emergency procurement to six months and does not allow for any extensions or renewals. However, the cause of the emergency could outlast the six-month contract term, and it is reasonable that a Transportation Business Unit (TBU) could require an emergency contract that could take longer than six months to complete. House Bill 767 would prohibit such a contract, potentially requiring the TBU to reduce the scope of work of the emergency contract to the extent of what could be completed in six months. This could lead to an incomplete, inadequate, and unsafe result.

To meet any needs not covered by the six-month contract term, House Bill 767 permits the procurement officer to utilize any procurement method except for the emergency or expedited methods. However, six months is not necessarily enough time to competitively procure a replacement contract without the emergency or expedited methods.

Further, should a TBU need to reduce the scope of an emergency contract to the work that could be completed in six months, with the remaining work to be completed by one or more subsequent contracts, the State could be faced with two or more contractors for work that is intimately connected. This could lead to substantial problems of coordination among contractors and issues of liability for delays, defects, and failures to perform, driving up cost to the State and further disrupting operations.

Under current mandatory terms and conditions, the State can owe a contractor a time extension. House Bill 767 would prohibit a time extension that would extend the term of the contract beyond six months from its inception, thus conflicting with other State laws.

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For example, on December 11, 2019, the Passenger Boarding Bridge located at the South Locust Point Cruise Terminal was damaged by a contractor performing construction for the MDOT Maryland Port Authority (MPA). The Passenger Boarding Bridge is proprietary equipment; therefore, only the original manufacturer in Spain was able to replace the major components damaged in the incident. Upon inspection, that contractor found major damage to the cabin of the Boarding Bridge, which provides contact with the ship while it is moored at the berth. The repair needed to be performed in two phases, which were estimated to take 32 weeks to complete. Due to international travel restrictions that were imposed due to COVID, MPA needed to extend the contract for another seven months.

If House Bill 767 was in effect at that time, MPA would not have been able to execute an emergency contract with a term exceeding six months. MPA would also not have been permitted to extend the emergency contract to allow time for the original manufacturer to complete repairs. MPA would have been left with the Passenger Boarding Bridge out of service, creating a safety hazard to passengers, ship crew members and service providers working on the berth.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating House Bill 767.

Respectfully submitted,

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