

Chapter 516

(Senate Bill 507)

AN ACT concerning

**Procurement – Construction Contracts – Contract Modification Clause – Report**

FOR the purpose of ~~requiring a procurement contract for construction to include a clause providing for contract modification when there is a substantial increase in the price of materials required to complete the contract, as determined by the unit, due to certain factors;~~ requiring the Secretary of Transportation and the Secretary of General Services to review certain State contracts and report findings regarding contract modifications related to the price of materials; and generally relating to contract modifications for construction contracts.

~~BY repealing and reenacting, with amendments,~~  
~~Article – State Finance and Procurement~~  
~~Section 13–218~~  
~~Annotated Code of Maryland~~  
~~(2021 Replacement Volume)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That ~~the Laws of Maryland read as follows:~~

~~**Article – State Finance and Procurement**~~

~~13–218.~~

- (a) ~~Each procurement contract shall include clauses covering:~~
  - (1) ~~termination for default;~~
  - (2) ~~termination wholly or partly by the State for its convenience if the head of the primary procurement unit determines that termination is appropriate;~~
  - (3) ~~variations that occur between estimated and actual quantities of work in a procurement contract;~~
  - (4) ~~liquidated damages, as appropriate;~~
  - (5) ~~specified excuses for nonperformance;~~
  - (6) ~~except for real property leases, the unilateral right of the State to order in writing;~~

~~(i) changes in the work, if the changes are within the scope of the procurement contract; and~~

~~(ii) a temporary stop or delay in performance;~~

~~(7) the obligation of the contractor to comply with the political contribution reporting requirements under Title 14 of the Election Law Article, to which the contractor may be subject as required under § 17-402 of this article; and~~

~~(8) nonvisual access for information technology as required under § 3A-312 of this article.~~

~~(b) In addition to the clauses required under subsection (a) of this section, a procurement contract for construction shall include:~~

~~(1) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF THIS SECTION, A CLAUSE PROVIDING FOR CONTRACT MODIFICATION WHEN THERE IS A SUBSTANTIAL INCREASE IN THE PRICE OF MATERIALS REQUIRED TO COMPLETE THE CONTRACT, AS DETERMINED BY THE PROCURING UNIT, DUE TO:~~

~~(I) DELAYED NOTICE OF COMMENCEMENT BY THE UNIT FOR ANY REASON;~~

~~(II) ACTS OR OMISSIONS BY THE UNIT;~~

~~(III) CHANGES IN THE WORK OR THE SEQUENCING OF THE WORK ORDERED BY THE UNIT OR ARISING FROM DECISIONS OF THE UNIT THAT IMPACT THE TIME OF PERFORMANCE OF THE WORK;~~

~~(IV) ENCOUNTERING HAZARDOUS MATERIALS OR CONCEALED OR UNKNOWN CONDITIONS;~~

~~(V) DELAY AUTHORIZED BY THE UNIT PENDING DISPUTE RESOLUTION OR SUSPENSION BY THE UNIT; OR~~

~~(VI) FORCE MAJEURE EVENTS, INCLUDING AN EPIDEMIC OR A PANDEMIC;~~

~~(2) a clause providing for contract modification if the condition of a site differs from the condition described in the specifications; and~~

~~[(2)] (3) a clause covering the requirements for notice of contract claims, submission of contract claims, and resolution of contract claims under § 15-219 of this article.~~

~~(e) Each procurement contract shall include a clause that gives to the parties notice that preexisting regulations apply to the procurement contract in accordance with § 11-206 of this article.~~

~~(d) At any time after the parties enter into a procurement contract they may include additional clauses in the procurement contract, by consent, without consideration.~~

~~(e) A clause required under this section for contract modification or change orders to a procurement contract for construction shall:~~

~~(1) make each contract modification or change order that affects the price of the procurement contract subject to:~~

~~(i) prior written approval from the unit and any other person responsible for the procurement contract; and~~

~~(ii) prior certification by the fiscal authority responsible for the unit about:~~

~~1. the availability of money; and~~

~~2. the effect of the contract modification or change order on the project budget or the total construction cost; and~~

~~(2) prohibit the contract modification or change order if the certification by the fiscal authority discloses that the contract modification or change order will increase the cost beyond budgeted and available money, unless:~~

~~(i) sufficient additional money is made available; or~~

~~(ii) the scope of the project is adjusted to allow completion within the project budget.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any construction contract executed before the effective date of this Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.~~

(a) On or before December 1, 2022, the Secretary of Transportation shall report to the General Assembly, in accordance with § 2-1257 of the State Government Article, for fiscal years 2019, 2020, and 2021:

(1) the number and percentage of State procurements for construction using a fixed-price contract with price adjustment;

(2) the number and percentage of State procurements for construction using a fixed-price contract with price adjustment where a price adjustment for materials was made during the contract; and

(3) for price adjustments identified under item (2) of this subsection:

(i) each material type for which there was a price adjustment; and

(ii) the average price adjustment for each material type.

(b) On or before December 1, 2022, the Secretary of General Services shall report to the General Assembly, in accordance with § 2-1257 of the State Government Article, for fiscal years 2019, 2020, and 2021:

(1) the number and percentage of State procurements for construction using a fixed-price contract with price adjustment;

(2) the number and percentage of State procurements for construction using a fixed-price contract with price adjustment where a price adjustment for materials was made during the contract; and

(3) for price adjustments identified under item (2) of this subsection:

(i) each material type for which there was a price adjustment; and

(ii) the average price adjustment for each material type.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022. It shall remain effective for a period of 1 year and, at the end of June 30, 2023, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

**Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.**