

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 507

(Senator Salling, *et al.*)

Budget and Taxation

Health and Government Operations

Procurement - Construction Contracts - Contract Modification - Report

This bill requires the Secretary of Transportation and the Secretary of General Services, by December 1, 2022, to each report to the General Assembly on (1) the number and percentage of State construction procurements using a fixed-price contract with price adjustment and (2) for price adjustments executed under those contracts, the material types affected and the average price adjustment for each material type. The reports must include data from fiscal 2019 through 2021. **The bill takes effect July 1, 2022, and terminates June 30, 2023.**

Fiscal Summary

State Effect: Operational effect and potential minimal increase in general and special fund expenditures (for overtime and/or contractual staff) for the Department of General Services and Maryland Department of Transportation to gather and analyze the data required for the mandated reports. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: State procurement law requires the Board of Public Works (BPW) to adopt regulations on price and cost principles based on generally accepted accounting principles. The principles adopted by BPW must be used:

- as guidelines for negotiations on estimated costs or fixed prices, price adjustments for contract modifications and change orders, and settlements of terminated contracts;

- to establish the allowability of costs under procurement contracts for the reimbursement of costs; and
- in any other situation that requires the establishment of the estimated or incurred costs of performing a contract.

Current State regulations forbid the use of cost-plus-a-percentage-of-cost contracts and subcontracts. They authorize State agencies to use any type of contract that promotes the best interests of the State but require that preference be given in the following order: (1) fixed-price; (2) fixed-price incentive; (3) cost plus incentive fee; and (4) cost plus fixed fee or cost-reimbursement. A “firm fixed-price contract” means a fixed-price contract that provides a price that is not subject to adjustment because of variations in the contractor’s costs. “Fixed-price contract” means a contract that places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. “Fixed-price contract with price adjustment” means a fixed-price contract that provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications.

A contract modification is defined as a written alteration that (1) affects specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of a procurement contract and (2) is accomplished by mutual action of the parties to the contract.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland State Department of Education; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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