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Position: FAV

Budget & Taxation Committee

Senate Bill 217

Transportation – Commuter Bus Service – Procurement

Position: Support

Dear Chairman Guzzone and the Members of the Senate Budget & Taxation Committee,

Thank you for the opportunity to provide this testimony in support of Senate Bill 217. The Martz Bus Company and Gold Line, its Maryland subsidiary, is a 5th generation family-owned business founded in 1908. We have provided safe, reliable, and courteous bus service for over 115 years, Maryland for over 50 years, and we have provided commuter bus service to MDOT MTA (“MTA”) in Maryland since 2010.

Senate Bill 217 would mandate that, whenever the Maryland Transit Administration (“MTA”) seeks to procure commuter bus services without exception, they:

1. act in accordance with Maryland State procurement laws and regulations; and
2. use only the “competitive sealed proposal” method of procurement.

The first item above ensures that MTA is restricted to using only the established requirements for “competitive sealed proposal” procurements under the State Financial and Procurement Title and the State Procurement Regulations of the Code of Maryland Regulations (“COMAR”). Accordingly, MTA would not be able to create its own “competitive sealed proposal” procurement methodology and would be required to use the established statutory and regulatory framework.

Specifically, MTA would be forced to follow Section 13-104 of the Maryland State Financial and Procurement Title and COMAR Chapter 21.05.03 (Procurement by Competitive Sealed Proposals) which, respectively, are the statute and regulations that govern all “competitive sealed proposal” procurements in Maryland. As relevant to commuter buses, Section 13-104(b) provides the following:

- whenever procurement is based on competitive sealed proposals, a procurement officer shall seek proposals by issuing a request for proposals;
- a request for proposals shall include a statement of:
 - i. the scope of the procurement contract, including the expected degree of minority business enterprise participation;
 - ii. a summary of the factors used to determine the expected degree of minority business enterprise participation for the procurement contract;
 - iii. **the factors, including price, that will be used in evaluating proposals; and**
 - iv. **the relative importance of each factor.**

In turn, when making an award, “the procurement officer shall award the procurement contract **to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the State considering the evaluation factors set forth in the request for proposals.**” Md. Code, State Fin. & Proc. § 13-104(f). Accordingly, MTA would be required to evaluate proposals under the full criteria of the competitively sealed proposal (e.g., safety record, safety program, on time performance record, maintenance program, mechanical reliability record, etc.) instead of simply using

price, to determine “the most advantageous” proposal. Note that this award process starkly contrasts with MTA’s current procurement methodology that bases the award solely on the “lowest bid price.” Md. Code, State Fin. & Proc. § 13-103(e)(3)(vi)(1).

More importantly, there is significant case law interpreting Section 13-104 that supports, in competitive sealed proposal procurements, the “award a contract to the higher-priced, technically superior proposal if it is determined that the higher priced, technically superior proposal is also the proposal most advantageous to the State.” United Technologies Corp. And Bell Helicopter, Textron, Inc., MSBCA 1407 and 1409,3 MSBCA ¶201 (1989); Information Control Systems Corporation, MSBCA 1198, 1 MSBCA ¶181(1984). Compare Housing & Development Software, LLC, MSBCA 2247,5 MSBCA ¶1500 (2001). In other words, if a bus company is stronger on all the substantive criteria, it should be awarded the contract even if it has the higher price.

Moreover, there is significant case law that clearly establishes that the evaluation criteria under a “competitive sealed proposal” procurement must be “reasonably related to the needs of the agency” and “may not unduly restrict competition.” E.g., Balfour Beatty Construction v. Md. Dep’t. of Gen. Servs., 103 A.3d 1091 (Md. 2014). Accordingly, MTA could not make up arbitrary evaluation criteria that did not actually represent the need of State in procuring safe, reliable commuter bus services.

The citizens of Maryland who utilize commuter bus services as currently procured by the MTA deserve safe, reliable, and courteous service. The MTA’s current practice of awarding contracts based on the lowest bid price creates an environment in which operators sacrifice quality of service in order to provide low-cost bids. Senate Bill 217 would create an environment in which commuter bus operators are incentivized to provide both high quality and low-cost services, and in which the MTA would be required to take into account qualitative factors other than simply price, resulting in safer roads and more reliable transportation for Maryland citizens.

Sincerely,

Brett Lininger

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SB 217_ Sen. McCray.pdf

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CORY V. McCRAY
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DEPUTY MAJORITY WHIP

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Vote Yes on Senate Bill 217

Bill Title: Transit – Commuter Bus Service - Procurement
Hearing Date: February 1, 2023, Budget and Taxation Committee

Greetings, Chair, Guzzone, Vice-chair Rosapepe, and all members of the budget and taxation committee.

Today, I seek your support in approving Senate Bill 217. Senate Bill 217 will require the Maryland Transit Administration (MTA) service to use competitive sealed proposal methods of procurement. MTA will conduct the procurement in accordance with the requirements under division II of the state finance and procurement article.

Senate Bill 217 ensures that there is a uniform process for our Commuter Bus Contracted which aligns with how we conduct procurement with other State of Maryland opportunities. Senate

Bill 217 will ensure that all participants provide safe and high-functioning services for Maryland Taxpayers. Passing this bill assures the Maryland Transit Administration of the responsibility of guaranteed excellence to riders across the State of Maryland.

Senate Bill 217 will be applied prospectively so that it doesn't impact prior contracts before July 1, 2023. By providing this testimony, I am hopeful that you will support Senate Bill 217.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Cory V. McCray'.

Cory V. McCray
State Senator

SB0217 - MTA - Procurement - OPP_FINAL.pdf

Uploaded by: Patricia Westervelt

Position: UNF

February 1, 2023

The Honorable Guy Guzzone
Chair, Senate Budget and Taxation Committee
3 East Miller Senate Office Building
Annapolis MD 21401

RE: Letter of Opposition – Senate Bill 217 – Transit - Commuter Bus Service - Procurement

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 217, as it would have the potential to hinder competition and complicate the Maryland Transit Administration's (MTA) Commuter Bus procurement process.

Senate Bill 217 requires the MTA to use the competitive sealed proposals method of procurement when selecting a Commuter Bus service provider. Senate Bill 217 also mandates MTA to conduct a procurement for Commuter Bus service providers in accordance with the provisions and regulations adopted under State procurement law.

Currently, State procurement law identifies multiple methods available to State procurement officials depending on the nature and circumstances of the procurement. Historically, Commuter Bus procurements have been conducted using the Invitation For Bid (IFB) procurement method because MTA is clear on the scope of work and contract requirements. The MTA's Commuter Bus routes and schedules are developed based on ridership data and fixed with certainty from point A to point B. Additionally, the MTA Commuter Bus team will be utilizing an industry index to validate diesel prices on the day services are rendered before fuel reimbursement.

In the past, Commuter Bus contracts required the maintenance of MTA owned buses, however, now contractors are solely responsible for providing and mainlining their own equipment. As a result, new contracts do not require the maintenance of MTA owned equipment. Because of this scope change there are currently little to no technical elements other than the contractor's ability to provide the service upon which MTA needs to evaluate bidders.

In addition, the RFP process requires significantly more labor and time to construct and review as opposed to an IFB. It would also prolong the procurement process as an IFB typically takes 6-8 months while an RFP process takes 12 months or longer. The greater subjectivity of an RFP could also expose the State to more protest actions from vendors.

The MTA has traditionally worked with a wide variety of providers and awarded Commuter Bus contracts to businesses of all sizes. An RFP process could have the effect of limiting competition, specifically pertaining to small businesses. Depending on an RFP's requirements, small businesses may not have the resources to bid.

The Honorable Melony Griffith
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Lastly, if this legislation leads to a decrease in competition, contract costs could rise. There is no way to estimate what this increase would be, but with FY23 Commuter Bus contract expenses expected to be \$56M even a 15 percent increase would lead to another \$8.4M annually, or \$42M over five years. This does not consider probable continued inflation, which has been at 9 percent over the last 12 months.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 217 an unfavorable report.

Respectfully submitted,

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