



Wes Moore, Governor · Aruna Miller, Lt. Governor · Atif Chaudhry, Acting Secretary

BILL: Senate Bill 358 Procurement – Construction Contracts – Contract Modification Clause

COMMITTEE: Budget and Taxation

DATE: February 15, 2023

POSITION: Letter of Concern

Upon review of Senate Bill 358 – Procurement – Construction Contracts - Contract Modification Clause, the Maryland Department of General Services (DGS), provides these comments for your consideration and urge an unfavorable report for Senate Bill 358.

This bill offers to compensate contractors for the cost of materials for a number of reasons, most of which are already covered by DGS’s contracts. Another provision included in the bill is for material cost increases due to Force Majeure Events, including Endemics and Pandemics, which are beyond anyone’s control.

The burden of verifying costs would fall on the DGS Construction Division. Staff would be responsible for verifying material cost increases and determining if the increase was due entirely to an Endemic or Pandemic. Since prices for materials naturally fluctuate, regardless of whether or not there is a pandemic, verifying these cost increases would be time-consuming and challenging. A vendor submitting a contract to the State is responsible for accurately estimating their material costs as a component in their bid while considering price fluctuations. If a contractor is allowed to ask for increased pricing based on market conditions, it takes away the ability for fair competition among all contractors; this competition is increased through the inclusion of fixed pricing in contracts. It should also be noted that there is no provision in Senate Bill 358 should a decrease in material costs occur.

Currently, **DGS has clauses in its contracts that allow for changes based on acts of the State or finding unknown hazards or conditions**, which a pandemic or endemic could fall under. This bill places an undue burden on the State and potentially increases contract prices.

DGS had a conversation with the bill’s sponsor and is researching and considering language that may be acceptable.

For additional information, contact Ellen Robertson at 410-260-2908.