

## 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,

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