BILL: **House Bill 949 - State Finance and Procurement - Retention Proceeds**

COMMITTEE: House Health and Government Operations

DATE: March 6, 2023

POSITION: Letter of Information

Upon review of House Bill 949 - State Finance and Procurement - Retention Proceeds, the Maryland Department of General Services (DGS) provides these comments for your consideration.

House Bill 949 will have a significant operational and potential fiscal impact on the Department of General Services (DGS) by **eliminating a mechanism the State utilizes to ensure the full completion of construction projects.**

Typically, DGS has 1,300+ active design and construction projects. DGS's goal is to successfully complete these projects. **Retention is a percentage of the construction contract that can be withheld from payment to the contractor until the successful completion of the project.** At substantial completion of a construction project, there is typically still minor work to be completed by the contractor, this can include touch-ups to previously completed work or small portions of work that do not affect the main use of the project. **The work is typically undisputed and necessary to the successful and full completion of the project, even though it may be considered minor.**

House Bill 949 requires undisputed retention amounts to be released within 90 days of the substantial completion. **The current DGS practice is to release retention at substantial completion and upon receipt of a proper invoice billing for the retention.** DGS will issue "Substantial Completion" when the State takes possession of a site from a contractor. The majority of this agency's construction work is in existing, occupied facilities.

On occasion, DGS does not release retention at substantial completion because there are items remaining that are not completed. For example, if a project included landscaping and was substantially complete in the winter, the State would take occupancy, but the landscaping would not be completed until spring. The remaining landscaping is undisputed, but if this legislation is passed the State would be required to pay the amount even though the work has not been completed.

The contractor may not put the time or effort into completing the remaining work if there is no financial incentive to do so. **The only remedy the State would have would be termination of the contract, then procuring and paying another contractor to finish the work. The State would then be required to file a claim against the original contractor to recoup the additional costs incurred.**

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