
February 7, 2024

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

RE: Letter of Information – Senate Bill 556 – Procurement – Construction Contingency Fund and Contract Modification

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) provides the following information for the Committee’s consideration on Senate Bill 556.

As written, Senate Bill 556 requires State construction contracts to include a clause providing for a contract modification when there is a substantial increase, or decrease, in the price of materials required to complete the contract under certain circumstances.

The MDOT recognizes that increases in the cost of materials may occur during a construction contract and that private sector partners do not have control over the cost of materials; however, contractors can employ mitigation strategies such as utilizing a contingency or an allowance in the bid to account for changes in the cost of materials. Contractors can also make purchasing decisions that can mitigate the impact of price changes, including changes to the materials used, where those materials are purchased from, and the timing of those purchases.

Many of MDOT’s current construction contracts are fixed-price with price adjustments to provide for variations in pricing under special conditions defined in the contract. As reported as a requirement of Senate Bill 507 of 2022, MDOT executed 314 construction contracts during fiscal years 2019 – 2021. Of those contracts, 174 were fixed-price with price adjustments, and all 174 contracts have had price adjustments made for specific materials. A total of 731 adjustments were made, for a total amount of \$30,792,168.

The Maryland Port Administration has implemented “Standard Process-38 Adjustments for Material Price Fluctuations; Payment for Stored Materials,” which has proven to be an effective method to address material price fluctuations. The Maryland Aviation Administration implemented these same policies in December. The Maryland Transit Administration allows escalations for certain materials, in accordance with Federal Transit Administration policies. The Maryland Transportation Authority utilizes contract language that allows price adjustments for materials on certain fixed-price contracts. The State Highway Administration grants price adjustments in accordance with COMAR and Federal Highway Administration policies.

The Honorable Guy Guzzone
Page Two

MDOT is aware that the bill sponsor will be offering amendments to align the bill with a proposal that was agreed upon during a work group formed during the 2023 interim to address material price fluctuations. MDOT was a member of the informal work group and looks forward to reviewing the amendments.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 556.

Respectfully submitted,

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090