

BILL: **Senate Bill 556** - Procurement - Construction Contingency Fund & Contract Modification

COMMITTEE: Senate Budget and Taxation

DATE: February 7, 2024

POSITION: Letter of Information

Senate Bill 556 addresses construction contract modifications when there is a substantial increase in the price of materials required to complete a contract, under certain circumstances. As we are aware, the COVID-19 pandemic exposed several shortcomings in our state procurement laws, including the inability of contracts to account for changes in circumstances not due to the fault of any of the parties.

Senate Bill 556, with sponsor amendments, would allow the Department of General Services (DGS), in consultation with the Department of Budget and Management, to use the Construction Contingency Fund, if necessary, to fund certain price fluctuations for materials that have been identified.

For background, in 2023 Senate Bill 358 was introduced to address this issue. At the direction of the Chair of the House Health and Government Operations Committee, DGS, the Department of Public Safety and Correctional Services and the Department of Transportation were asked to more closely examine the processes proposed in the 2023 bill. The group, along with the sponsor and members of the House committee, met over the interim and developed an agreeable proposal to address material price fluctuations. The sponsor's amendments will bring the bill in line with the agreed upon proposal.

The proposal, similar to one in use at the Maryland Port Administration, would add to the DGS Design, Construction and Energy division's General Conditions for Construction Contracts under guidelines identified as DGS Contract Modification - Material Price Fluctuation. These guidelines will provide for the use and acceptance of material price fluctuation by establishing a

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contract monetary threshold for when costs can be adjusted up and based on fluctuations that are above market monthly increases identified by suppliers. This is applicable to projects over \$200,000, Category III Small Procurements and higher. The fluctuation must be an increase or decrease of at least 10% or more than the price of the material at the time of the bid. The Producer Price Index, as maintained by the U.S. Bureau of Labor Statistics, will be the benchmark for determining monthly fluctuations in costs.

For additional information, contact Ellen Robertson at 410-260-2908 or Lisa Nissley at 410-260-2922.