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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

The Honorable Chair Guy Guzzone
The Honorable Vice Chair Jim Rosapepe
Budget & Taxation Committee
Senate Miller Office Building
Annapolis, MD 21401

January 28th, 2026

SB213 State Procurement - Transparency Procedures

Chair Guzzone, Vice Chair Rosapepe, and esteemed colleagues of the Budget & Taxation Committee,

Senate Bill 213 is a focused procurement modernization bill that strengthens **fiscal accountability, transparency, and predictability** of how Maryland spends taxpayer dollars through state contracts. It is a crossfile of HB193 which is a refiling of HB 304. HB 304 unanimously passed the House last session. This past summer, Chair Guzzone convened a workgroup to discuss HB304.

Senate Bill 213 and it's crossfile, HB193, is a procurement modernization bill that reflects lessons learned from prior legislation and from the extensive interim review conducted by the Department of Legislative Services at the request of this Committee. You have in your floor system a DLS report summarizing the discussions of the summer workgroup.

As the DLS letter dated January 7, 2026 makes clear, the General Assembly has wrestled for several years with how to fairly address unexpected contract cost increases, particularly those arising from changes in State law enacted after a contract is awarded (see attachment). That review carefully outlines the competing concerns: protecting taxpayers and budget predictability on one hand, while ensuring a fair and functional procurement system on the other. SB 213 is informed by that analysis and is intentionally more focused, disciplined, and more balanced than earlier proposals.

Each year, the State enters into billions of dollars of procurement agreements. When those processes are clear and consistent, the State benefits from stronger competition, fewer disputes, and better value for taxpayers. Senate Bill 213 makes targeted, practical updates to help achieve those outcomes.

First, the bill enhances **transparency and accountability** by strengthening the debriefing process for unsuccessful bidders. As DLS noted, confidence in the procurement system reduces

disputes and litigation. Clear explanations—while protecting proprietary information—help vendors understand award decisions and improve competition without fiscal risk to the State.

Second, Senate Bill 213 provides needed **clarity around procurement participation rules**. The DLS review raised concerns about litigation risk when standards are unclear. This bill provides clarity so that agencies can benefit from industry expertise without undermining ethics rules or competitive fairness.

Third—and most importantly in light of the DLS letter—SB 213 addresses **changes in State law in a carefully limited way**. The DLS analysis recognizes that long-term State contracts, often lasting five to ten years, make it extremely difficult for contractors or the State to reasonably forecast future statutory changes. SB 213 responds to that reality by requiring contracts to include a mechanism for equitable adjustment when State-driven legal changes materially affect contract performance, while preserving fiscal controls and existing approval requirements.

Unlike earlier bills reviewed by DLS, SB 213 does not shift unlimited risk to the State, does not mandate payment without oversight, and does not rely on speculative assumptions about bid behavior. Instead, it provides a clear contractual framework that reduces uncertainty, discourages disputes, and aligns with sound fiscal management.

Finally, Senate Bill 213 modernizes **claims and protest procedures,** an area the DLS letter identifies as procedurally imbalanced. By clarifying timelines, responsibilities, and good-faith certification requirements, this bill promotes earlier resolution of disputes while protecting taxpayer dollars.

In short, Senate Bill 213 reflects the work of this Committee, the concerns raised during the 2025 session, and the thoughtful analysis provided by DLS. It strengthens procurement transparency, reduces risk, and improves predictability—without expanding spending or undermining fiscal discipline.

I respectfully ask for a favorable report on Senate Bill 213.

Sincerely,

Senator Karen Lewis Young

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In short, Senate Bill 213 reflects the work of this Committee, the concerns raised during the 2025 session, and the thoughtful analysis provided by DLS. It strengthens procurement transparency, reduces risk, and improves predictability—without expanding spending or undermining fiscal discipline.

I respectfully ask for a favorable report on Senate Bill 213.

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

January 7, 2026

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

Dear Chair Guzzone,

This letter is in response to your request that the Department of Legislative Services (DLS) examine two bills considered by the Senate Budget and Taxation Committee during the 2025 legislative session. HB 304 (State Procurement – Transparency and Procedures) and HB 1499 (State Procurement – Construction and Services – Contract Modification) both addressed procurement contract modifications for unexpected contract costs such as changes in law or as a result of collective bargaining. Both bills passed in the House but did not move in the Senate. In response to questions and concerns raised in the Senate, DLS reviewed the bills and related issues over the 2025 interim and submits this letter for your consideration. In conducting its review of both proposed bills, DLS met with the relevant stakeholders, reviewed State and federal law, and analyzed State contract modification data.

This letter outlines the primary issues addressed in the bills, summarizes the arguments from each side, reviews the available data, and provides a balanced discussion of the policy options available to the State.

Legislative Overview

HB 304 and HB 1499 sought to address proponent concerns that State contractors may be subject to cost increases due to changes in law occurring during the contract term. Both bills would have required the State to bear the burden of any such cost increases under specified circumstances. To understand the primary issues raised, it is important to define several key terms:

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- ***Contract modification*:** This is defined under Maryland law as a written alteration that is accomplished by **mutual action** of the parties to a procurement contract and that affects the provisions of the contract (such as specifications, delivery point, period of performance, price, or quantity) [emphasis added].

- ***Equitable adjustment*:** This term is not defined in State law or the Code of Maryland Regulations (COMAR), but it is used in COMAR and generally refers to a change to a contract price or provision to compensate a contractor for additional costs.

- ***Change order*:** This is a unilateral written order from a procurement officer that directs a contractor to make a change authorized by the procurement contract without the consent of the contractor.

Although "contract modification" and "equitable adjustment" are often used interchangeably, they have an important distinction. Equitable adjustment narrowly addresses the cost of the contract and any provisions of the contract that impact cost, while contract modifications can be more wide-ranging and change any part of the contract, regardless of whether the change impacts cost. An equitable adjustment is a form of contract modification, but while a contract modification may include or focus on equitable adjustment, it is not limited to such changes. While contract modifications and change orders both direct changes to a procurement, the important distinction between the two is that a contract modification requires the consent of both the State and the contractor because it changes the scope of a contract, while a change order may be issued by the State within the scope of the contract.

Among other provisions, HB 304 would have amended §13-218 of the State Finance and Procurement Article to require the State to issue contract modifications for increased costs on any contract due to changes in law. Section 13-218 currently requires the State to include clauses in all procurement contracts that cover termination for default, liquidated damages, and specified excuses for nonperformance, among others. Further, §13-218 requires a procurement contract for construction to include a clause providing for contract modification if the condition of a site differs from the condition described in the specifications. While §13-218(e) provides that a contract modification clause must make each modification that affects the price of the procurement contract subject to prior fiscal approval, this provision was unchanged. It is unclear whether the proponents' intent was to bypass this fiscal protection or make the requirement for a modification subject to this guardrail.

As passed by the House of Delegates, HB 1499 would have required all State procurement contracts for security services and construction contracts exceeding $1,000,000 and with terms of three years or longer to include a clause that requires contract modification for the equitable adjustment of a contract for increased costs and benefits resulting from changes in law increasing the required compensation or benefits or from collective bargaining.

While the bills' provisions regarding contract modification were substantively similar, a primary distinction was that HB 1499 included increased costs arising from collective bargaining and as amended, limited the scope of the requirement to high-value and long-term contracts. In its review of this issue, DLS examined the primary arguments both in support of and in opposition to these contract modification requirements, discussed in the following sections.

Proponents' Arguments

Proponents sought legislation due to concerns that increased costs may significantly raise the cost of performing a contract, locking contractors into a bid that no longer reflects the actual cost of completing the work due to unforeseen circumstances. When cost increases stem from new State laws, this concern is compounded by the fact that the State, as the party mandating the change, is also party to the contract. By mandating a contract modification in specific instances, HB 304 and HB 1499 sought to mitigate the risks associated with unanticipated cost increases. On its face, requiring a contract modification in these instances appears to result in increased costs for the State, but proponents contend that the overall fiscal impact would be offset by a reduction in bid amounts. A common contractor practice adds a 5 to10% contingency into bids to hedge against the possibility of increased costs, including those arising from new statutory requirements or collective bargaining. With statutory assurances that certain cost increases would not fall on contractors, proponents argue that this "cushion" would no longer be necessary, resulting in lower bids overall.

Proponents further argue that, despite designated procurement agencies expressing a willingness to negotiate when unanticipated costs arise, meaningful negotiations rarely occur in practice. Contractors may attempt to resolve issues informally with the procuring agency, but their only formal remedy is to file a contract claim. As contractors have just 30 days to provide notice of a claim, and only 30 days after that to submit the claim itself (or 90 days for construction contracts) once the basis for a claim becomes known, there is little opportunity to negotiate a resolution before escalating to a formal claim. In contrast, the federal government generally does not require a notice of intent to file a claim, and contractors have six years to submit a claim. This gives contractors and the government time to pursue negotiated solutions; if they cannot reach agreement, contractors may still file a single claim covering all issues that arose during performance of the contract. Advocates maintain that this model encourages collaboration, reduces disputes, and results in a more balanced and predictable process for addressing cost-related issues.

Finally, HB 304 contained provisions requiring a contractor to supplement a claim with a certification that, to the best of the contractor's knowledge and belief, the claim is made in good faith, all supporting data is accurate and complete, and that the amount requested accurately reflects the contract claim for which the contractor believes the procurement agency is liable. This could allow for the rejection of any claim not supported by appropriate evidence and justification.

Opponents' Concerns

Bill opponents raised concerns that shifting the burden of unexpected costs, even only those associated with new State laws or collective bargaining agreements, from contractors to the State increases uncertainty and could significantly increase project expenses. Depending on the scope of any changes in law or the terms negotiated in a collective bargaining agreement, these added costs could be substantial. In the case of labor union negotiations, the legislation could require the State to pay for cost increases resulting from discussions to which the State is not a party, with no incentive for those conducting the negotiations to minimize those cost increases.

As previously discussed, proponents of these contract modification reforms argue that the State would save money because contractors would no longer feel obligated to inflate their bids to account for increased risk. However, opponents counter that this reasoning rests on two key assumptions that may not hold true. First, it presumes that all (or nearly all) contractors bidding on State projects are currently inflating their bids. Although some contractors have testified that they do so out of necessity, this practice is difficult to verify and cannot be assumed across the board. Competitive bidding and competitive selection already exert downward pressure on prices, incentivizing contractors to submit the lowest feasible offer to win a procurement. Second, the argument assumes that even if contractors are inflating their bids, they will reduce those bids once the risk of absorbing new statutory or collectively bargained costs is removed. Opponents point out that there is no guarantee that contractors will adjust their pricing behavior as anticipated. While the proposed policies may eliminate certain risks, contractors must still account for other risks and uncertainties, such as broader economic fluctuations, that are beyond the control of both the State and the contractor. As a result, contractors may still continue to incorporate a pricing buffer of a similar magnitude into their bids.

State procurement agencies emphasize that when a significant change affects the cost of a procurement, they are willing to work with contractors to negotiate a modification. At the same time, agencies express the importance of establishing clear standards for approving such modifications to prevent contractors from deliberately underestimating their costs during the bidding process. Without safeguards, a contractor could submit an unrealistically low bid to win a contract only to seek a higher contract value through a modification once the award is secured. Agencies argue that this would undermine the integrity of the competitive bidding and selection processes and create incentives for strategically low bids that do not reflect the true cost of performing the work. Although the State could, in theory, cancel a contract in these circumstances, doing so is highly disruptive in practice. Terminating a contract would require conducting an entirely new procurement, which could delay project timelines and increase overall costs.

Finally, HB 304 would have altered procurement ethics requirements to allow vendors to provide information to agencies during the development of contract solicitations. This change could increase the likelihood that unsuccessful vendors would file bid protests claiming that the information provided created an unfair advantage, ultimately increasing litigation and associated costs for the State.

Data on Procurement Contract Modifications

Available data on contract modifications in the State is limited. In discussions with stakeholders, advocates indicated that a key motivation for these bills was dissatisfaction with the current process for seeking equitable adjustments through contract modifications, despite agency assertions that they are willing to negotiate adjustments when circumstances warrant. To better understand the scope of this issue and how it is currently addressed, DLS sought data that could shed light on whether changes in law were a common reason for modification requests, and in those cases, how frequently such modifications are approved. However, agencies were generally unable to provide data at this level of specificity. The Department of General Services (DGS) advised that it does not keep track of contract modification request and approval data, while the Maryland Department of Transportation (MDOT) was able to provide basic information that reveals limited insight into the role that contract modifications play in the procurement process. Data from the Board of Public Works (BPW) and the Maryland State Board of Contract Appeals (MSBCA) is of somewhat more limited value because it represents only negotiation outcomes, rather than initially requested modifications, as will be further discussed.

MDOT

MDOT provided an overview of its contract modifications from the period of January 1, 2024, to June 30, 2025. Although MDOT was not able to provide data on which contract modifications resulted specifically from changes in law or collective bargaining, the available data show that modifications account for a substantial portion of the agency's overall spending on construction and service contracts. Of the $4.04 billion that went towards construction and service contracts in the stated time period, $1.27 billion, or 31%, reflected additional costs added through approved modifications. Overall, 21% of MDOT's construction and service contracts during that period received a cost-increasing contract modification. These findings indicate that contract modifications are a routine part of MDOT's procedure following the award of a contract. MDOT was not able to provide data on denied modification requests or on how approved increases compared to the amount of modification originally sought by a contractor.

BPW

Data from BPW shows that from fiscal 2021 through 2025, the board approved $11.9 billion in contract modification increases. The number of contract modifications approved by BPW due to new laws or collective bargaining agreements could not be determined. Over that period, $94.8 million in contract modification requests to BPW were listed as "withdrawn". Thus, the data indicated that the vast majority of requests for contract modification increases were approved by the board. However, it is important to note that this data do not include modifications that were only considered by the procuring agency and did not get sent for consideration to BPW. It is possible that requests were denied before they had the opportunity to be presented to the board.

MSBCA

Of the 58 total MSBCA decisions issued between 2021 and 2025, 11 decisions were made in favor of the contractor, 3 decisions were split (a portion of the decision favored the contractor while a portion favored the State), and the remaining 44 decisions were made in favor of the State. Over this five-year period, 24% of decisions were made either wholly or partially in favor of contractors, while 81% of decisions were wholly or partially in favor of the State. Fifteen of the cases before the board during this period dealt with requests for equitable adjustment, and 3 cases were complaints for interest due on change orders. Of those 18 total cases, only 1 was decided in favor of the contractor, and 1 resulted in a split decision, representing 11% of equitable adjustment or change order interest cases decided in favor of the contractor.

Risk Related to Increased Contract Costs

Expanding the circumstances under which an equitable adjustment is granted would shift a greater portion of that risk to the State, potentially increasing State expenditures and reducing the contractor's incentive to accurately forecast costs at the bidding stage. When a contractor enters into an agreement with the State, both parties assume certain risks related to contract costs. At the time of bidding or submitting an offer, the contractor must predict the total cost of performing the work based on available information and reasonable assumptions. However, actual performance conditions may differ from those anticipated. In such cases, an equitable adjustment may be negotiated to account for increased costs resulting from unforeseen circumstances, such as changes in project scope or conditions beyond the contractor's control. Generally, the contractor bears the risk of cost increases that do not qualify for an equitable adjustment.

As previously discussed, HB 1499 would have mandated an equitable adjustment on limited types of contracts but only for increased compensation and benefits as a result of statutory changes, among other factors. More broadly, HB 304 would have required an equitable adjustment to compensate a contractor for increases in cost and time due to "changes in law." For the purposes of this discussion, we assume that these provisions could or would be clarified to require an equitable adjustment only due to changes in State law (the bills as passed by the House did not specify State-only changes). Because the State has a role in making statutory changes but is not a party to collective bargaining agreements affecting contractors, we consider these two circumstances separately.

If the State assumes responsibility for post-award increases in compensation negotiated through collective bargaining, it transfers the risk of this cost escalation from the contractor, who is in the best position to manage and anticipate such costs, to the public. This shift can undermine competitive bidding by reducing contractors' incentives to price labor risks accurately, lead to unpredictable increases in contract costs, and complicate budget planning for State agencies. Contractors engaging in collective bargaining may be incentivized to grant concessions they would not have otherwise, knowing those costs can be passed through to the State. They may also negotiate compensation terms for employees under State contracts separately from other contracts,

so that any increases are only ever borne by the State. Moreover, shifting these costs may create inequities among bidders if some have existing collective bargaining obligations while others do not. In the case of increased compensation due to changes in State law, however, the State is in a better position to control the timeline of statutory changes and anticipate the costs associated with those changes.

Changes to State Law – Notice of Changes and Fiscal Forecasting

In many instances, parties to a state contract have plenty of time to prepare for changes in state law. The vast majority of Maryland bills enacted into law become effective approximately six months after the close of the legislative session in which they are passed and up to approximately eight months after the bill would have been introduced. Many changes in state law with significant impact are passed with a delayed effective date, both to provide additional notice to the impacted public, and to give the appropriate regulatory and enforcement entities the time needed to implement any necessary changes.

This issue was the subject of a decision issued by MSBCA in 2020. In August 2017, DGS issued an invitation for bids for security guard services at multiple State facilities. The contract was awarded to Red Coats, Inc d/b/a Admiral Security Services and executed in December 2017. In January 2018 the General Assembly overrode the Governor's 2017 veto of the Maryland Healthy Working Families Act, and it went into effect in February 2018, requiring Maryland employers with 15 or more employees to provide paid sick and safe leave to eligible employees. Red Coats/Admiral requested an equitable adjustment from DGS, asserting that the new law had increased its labor costs under the contract. DGS denied the claim, finding that the contract's scope of work had not changed. Red Coats appealed and MSBCA agreed that Red Coats/Admiral was not entitled to an equitable adjustment, also noting that the contract required the contractor to comply with all applicable laws and regulations, and therefore the risk of future legislation was assumed. We also note that in this case, the legislation at issue had passed (and been vetoed) before the invitation for bids or execution of the contract, and it was reasonable for both parties to foresee that a veto override may be coming during the 2018 legislative session.

Despite the common lead-time between the passage of a law and its implementation, this would not provide enough notice for contractors who have already entered into a state contract. In our discussions, DGS noted that the majority of its contracts are 5 years in duration, while some contracts (for example, information technology contracts) have moved to a standard of 10 years. Changes to State law over this extended time horizon would be very difficult for anyone to predict prior to submitting bids or offers or executing the contract.

When considering proposed legislation, the General Assembly reviews the fiscal impact of the bill. Under current law, this fiscal analysis should include any increase to the cost of future State contracts, though it is often difficult to quantify. Because equitable adjustments to existing contracts are not mandatory, the current method of preparing a fiscal impact note would not include consideration of these increased costs. Were equitable adjustments for existing contracts

mandatory based on changes to State law, numerous factors would still make it nearly impossible to quantify the fiscal effect on existing State contracts. For starters, the State does not maintain a database of all active State contracts and their terms, so identifying all affected contracts would be virtually impossible. Further, because such increases would not occur on all contracts, it would be incredibly unlikely that any fiscal note would be able to include a reliable estimate of the increase in costs for existing contracts when legislation is passed. Therefore, the General Assembly would not be able to meaningfully factor these costs into its consideration of the need for the change in law.

Process for Negotiating Equitable Adjustments

As discussed above, many change orders have no effect on project cost, but others can involve additional costs to the contractor or subcontractor. If the change being sought is within the scope of the original contract, the State can issue a change order unilaterally. If it affects cost, the State procurement unit must follow the process and meet the conditions established in statute. For contracts for construction (excluding public school construction), information processing equipment, cloud computing services and associated services, and information technology system and cybersecurity upgrades and modernization, State law prohibits a procurement unit from requiring a prime contractor on a State construction contract to begin work on a change order until a written change order is issued that specifies whether the work is to proceed, in compliance with the terms of the contract, on an agreed-to price, force account, construction change directive, or time and materials basis. Similarly, a prime contractor cannot force a subcontractor to begin work unless the same conditions are met. Force account allows a unit to compel contractors to complete work on change orders subject to payment for time and materials plus a profit markup once work related to a change order has been completed and billed. Because of the markup and other factors, force account is viewed as a last resort to keep work proceeding on a project.

As previously discussed, for construction contracts only, §13-218 of the State Finance and Procurement Article requires that the contract includes a clause providing for contract modification if the condition of a site differs from the condition described in the specifications. The contract modification or change order, however, may not increase the cost of the contract beyond budgeted and available money unless additional money is made available or the project scope is adjusted to allow the project to stay within the original budget.

In our discussions with DGS and MDOT, both agencies anecdotally reported that the majority of requests for equitable adjustment were successfully negotiated with the procurement officer, with the State generally granting the majority of requests (regardless of the reason for the request). Because the agencies do not maintain data on the number of requests for equitable adjustment (REA) received, the number granted or rejected, and dollar values for any negotiated figures below the originally requested adjustment, it is difficult to determine the accuracy of this account. The data we were able to examine relating to REAs submitted to BPW for approval reflects only those REAs for which the procurement officer and contractor had already reached an agreement, and therefore do not reflect those rejected or only partially granted. Similarly, the data

on rejected REAs submitted to MSBCA is unlikely to reveal the full number of those requested, as contractors are likely to file an appeal only in the most egregious of circumstances.

Even when change orders and associated equitable adjustments are successfully negotiated, the State retains unilateral control to decide when that additional payment will actually be granted. While State law generally provides that a unit may not compel a contractor to perform work until a written change order is provided, it also retains the unit's prerogative to compel change order work if there is a dispute as to whether the work is included in the scope of the original contract. If a procurement officer and contractor disagree, the procurement officer can issue an order to perform the disputed work, which the contractor may not refuse. A contractor's only recourse is to file a claim seeking additional compensation.

Moreover, in our review of the past five years of MSBCA opinions, MSBCA repeatedly noted instances in which change orders were not issued quickly after a unit provided a contractor with a letter agreeing to the price to be paid for additional work. Because the change order itself had not been issued, interest is not due on any delayed payment. In these instances, the contractor is bound to do the additional work, but the State is not bound to pay promptly for that work (or pay interest for late payment).

Contractors seeking to negotiate an equitable adjustment must also be cognizant of the 30-day period within which a contractor must file notice of a claim. There is no process to toll the time requirements while the parties engage in a negotiation. Recognizing that contractors were regularly filing claims after this time period had lapsed, MSBCA issued this warning to contractors regarding the filing of claims despite any directive received from the State regarding negotiations: "[B]oth contractors and State agencies should be mindful of the risk associated with pursuing informal internal dispute resolution processes without first filing a timely notice of claim once the basis for a claim is known, or should have been known, whichever is earlier. To the extent there is a conflict as to when and with whom a notice of claim or claim should be filed, the requirement set forth in COMAR will always take precedence over any conflicting directive issued by an agency. Here, COMAR trumps any understanding Appellant might have had based on the parties' "course of conduct."" A-Del Construction, Inc., Maryland State Board of Contract Appeals (MSBCA) 3127 & 3128 fn. 5 (2022). The 30-day time period does not begin once the State rejects a contractor's request for equitable adjustment, but on the date on which the contractor should have known of the basis for the claim. There is no requirement for a procurement officer to issue a decision regarding an equitable adjustment within a certain period of time.

Alternative to Requiring Mandatory Equitable Adjustments

If the General Assembly does not wish to enact legislation requiring mandatory equitable adjustments for changes in law and/or collective bargaining, it may wish to consider the following alternative actions.

1. ***Establish a Deadline for Agencies to Approve or Reject REAs and Adjust the Appeal Timeline Accordingly*:** As noted previously, there is no deadline for a procurement officer to issue a decision regarding an equitable adjustment, allowing the deadline for the contractor to file an appeal with MSBCA to pass. For illustrative purposes, the General Assembly could require procurement officers to issue a decision (including decisions arrived at through negotiation) within 30 days and allow the contractor to file an appeal within 15 days of the procurement officer's decision. Among other things, this would encourage the procurement officer to expedite the decision to avoid delays in contract performance.

2. ***Require Agencies to Track and Report on REAs*:** The General Assembly could require data tracking and reporting from DGS and MDOT to get a better understanding of the frequency with which equitable adjustments are requested (including the basis for the cost increase), the frequency with which the equitable adjustment is granted (including whether the cost increase granted is a different value than that requested), and the total dollar value impact to the State of these adjustments. Once the magnitude of this issue is better understood, the best approach for legislation could become more clear as well.

3. ***Define "Change in Scope of Work" to Include Increase in Labor Costs*:** Rather than requiring equitable adjustments, another option to address the concerns raised by the proponents of HB 304 and HB 1499 of 2025 would be to define "change in scope of work" in Code to include increases in labor costs. While this would not mandate an equitable adjustment, it would address the issue raised in the Red Coats decision, discussed above, by allowing for increased labor costs to be considered in the same manner as changes to the scope of a contract.

Options for Limiting the Fiscal Impact of Mandatory Equitable Adjustments

If the General Assembly is interested in moving forward with a policy of mandating equitable adjustments for contractors based on changes to State law or collective bargaining, we have outlined some options that would limit the fiscal impact to the State.

1. ***Limit Adjustments to Changes in State Law*:** Any bill mandating equitable adjustments based on changes to law should be limited to changes in State law or regulations, excluding changes in federal or local laws. This reflects the role of the State in controlling and forecasting such changes, as well as limiting the overall potential for fiscal impact.

2. ***Exclude Adjustments Based on Collective Bargaining*:** Because the State is not a party to collective bargaining negotiations affecting employees of contractors, transferring the risk for the outcome of these negotiations to the State is less appropriate. It incentivizes negotiating outcomes that are uniquely deleterious for the State with no recourse for the contracting unit.

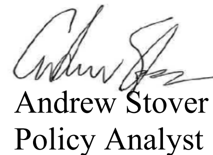
3. ***Ensure Prospective Application of Legislation*:** To ensure that existing contracts would not be subject to mandated equitable adjustments and any future contracts could be budgeted with such adjustments in mind, any bill mandating equitable adjustments can be drafted to apply only prospectively to contracts *entered into* on or after the effective date of the bill.

4. ***Require That REAs Quantify the Price Increase*:** To limit excessive or frivolous REAs, a bill could include both a definition of "cost increase" and "equitable adjustment", and a standard by which a price increase may be demonstrated. Legislation could also set a standard of review for decisions by a procurement officer denying an REA.

5. ***Percentage Limit on Price Increases*:** Another option to limit unanticipated cost increases is to allow equitable adjustments only up to a certain percentage of the total contract price. This would allow better price forecasting by the State while still allowing contractors recovery for price increases to a certain level, beyond which point both the State and contractor would have the option to cancel the contract due to the excessive price increase.

If you have any questions about the information outlined above, please contact us at Lindsay.Rowe@mga.maryland.gov or andrew.stover@mga.maryland.gov.

Lindsay A. Rowe
Lindsay A. Rowe
Principal Policy Analyst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