
January 28, 2026

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

Re: Letter of Information – Senate Bill 63 – State Procurement – Construction and Service – Contract Modification

Dear Chair Wells and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 63 and offers the following letter of information for the Committee’s consideration.

Senate Bill 63 requires contracts for construction and security services contracts exceeding \$2,000,000 and with terms of three years or longer to include clauses requiring contract modifications to provide equitable adjustments for increased costs to the contractor due to statutory changes in law increasing compensation or benefits. Contracts for security services would also need to include a clause requiring contract modifications to provide equitable adjustments for increased costs for compensation or benefits due to collective bargaining.

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 cost increases.

When contracts are bid, it is a snapshot in time for the wage rates and collective bargaining agreements in place at that time and it is applicable for the entire duration of the contract. MDOT does not pay construction contractors based on the wage rate classifications and hours they worked. Instead, MDOT pays based on the actual work items, for example: tons of asphalt or cubic yards of excavation. Actual work items do not easily translate into a wage rate-based change order.

Most contractors already plan the risk of increased wage rates or changes to collective bargaining agreements – and formulate this risk into their bid. It is best to keep this risk with the contractors as they know best how to work the risk of increased labor costs into their bids for the scope specified in the contract. Causing MDOT to assume the risk would substantially increase costs when the budgets are already very constrained.

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The advantages of agreeing to a contract price at a particular time are lost to MDOT when the contractor can obtain increased compensation. MDOT Procurement enters into contracts based on available funds projected at the time the contract is signed. Absent a process to account for the potential increase in compensation cost at the time of the creation of a contract, this modification would result in financial shortfall of costs not factored into the budget process at the time of the contract execution.

MDOT would prefer that Procurement Officers retain their authority to decide whether to approve modifications and change orders in order 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. 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 we 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.

On a technical standpoint, MDOT would like to note that Senate Bill 63 would require contract modifications in accordance with these new provisions to be contingent upon approval by the Chief Procurement Officer of the Department of General Services' Office of State Procurement. However, MDOT is its own Primary Procurement Unit and neither our Construction contracts nor our Security Services contracts are subject to review and approval by DGS Office of State Procurement's Chief Procurement Officer.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 63.

Respectfully submitted,

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Maryland Department of Transportation
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