

Senate Bill 63 - State Procurement - Construction and Services - Contract Modification

Position: Letter of Information

Committee: Senate Budget and Taxation Committee

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From: John R. Woolums, Esq.

The Department of General Services (DGS) takes no position on Senate Bill 63 and is providing this Letter of Information for the Committee's consideration.

This bill would require a procurement contract for construction for 3 years or more in duration and valued at greater than \$2,000,000, to include a clause requiring contract modification for the equitable adjustments of the contract for increased costs due to statutory changes increasing required compensation or benefits. The bill also would require a procurement contract for security services for 3 years or more in duration and valued at greater than \$2,000,000, to include a clause requiring contract modification due to statutory changes increasing required compensation or benefits or collective bargaining. Lastly, a contract modified in accordance with the parameters above would be contingent upon approval by the Chief Procurement Officer.

DGS has concluded that Senate Bill 63 would have an operational and fiscal impact on the DGS Office of State Procurement (DGS OSP). The extent of the impact is indeterminate because the bill does not specify the maximum amount of money or percentage allowed for contract modifications. Similarly, the bill does not specify the number of times a contract may be modified due to statutory changes or collective bargaining. As a result, the fiscal impact could vary greatly depending on the specific statutory change and an individual contract. This same uncertainty applies to modifications related to collective bargaining.

Currently, based on contract type, 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. 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.

This transfer of risk is also noted in the *DLS, Office of Policy Analysis letter to Chair Guzzone dated 1/7/26* "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.” Additionally, the DLS letter notes “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.”

Lastly, the Chief Procurement Officer (CPO) does not currently approve contract modifications or have oversight over the Maryland Department of Transportation (MDOT). Adding oversight of MDOT’s contract modifications would pose an additional burden that could not be met with existing staff resources.

Again, DGS is providing this testimony for informational purposes, and the Department looks forward to being of further assistance as the Committee considers this bill.

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