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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 213 – State Procurement – Transparency and Procedures***

Dear Chair Guzzone and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 213 and offers the following letter of information for the Committee’s consideration.

Senate Bill 213 makes changes to State procurement-related definitions, processes, and requirements impacting debriefings for unsuccessful offerors, contract modifications, protests, and contract claims.

During debriefings, Senate Bill 213 will require Procurement Offices to disclose all relevant information that has been requested, except for information reasonably determined by the Procurement Officer to be confidential, proprietary, or privileged. Since MDOT Procurement Officers utilize scripts when holding debriefings, this information needs to be requested before the debriefing to give the Procurement Officer the opportunity to determine what is confidential, proprietary, or privileged in advance. Otherwise, we risk divulging details protected by the Public Information Act. This could discourage some companies from competing for State contracts out of fear that the debriefing process will be used by competitors to steal their legitimate confidential commercial and financial information and trade secrets. Other companies might choose to compete but might withhold important and useful information out of fear that it will be revealed to competitors.

Senate Bill 213 will require a clause necessitating a contract modification to provide an equitable adjustment to compensate the contractor for increases in the cost of and time for contract performance due to changes in law. Shifting the burden of unexpected costs, even only those associated with new State laws, from contractors to the State increases uncertainty and could significantly increase project expenses. When procurement officers retain authority to decide whether to approve modifications, they can prevent contractors from deliberately underestimating their costs during the procurement process. Without safeguards, a contractor could submit an unrealistically low bid or financial proposal 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.

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Senate Bill 213 will require procurement officers to issue the agency's final decision on a protest within 60 days after receipt or risk the protestor deeming no response as a decision to deny the protest. This could result in an increased number of appeals to the Maryland State Board of Contract Appeals (MSCBA), which means greater delays in the award of contracts and the start of work under those contracts, as well as increased litigation costs in defending these appeals. It often takes 90-120 days for procurement officers to review all applicable procurement files, draft the response, collaborate with Assistant Attorney Generals, and send to the agency head or designee for review.

Senate Bill 213 will also cause MDOT to be vulnerable to contract claims long after relevant project documents and witnesses have become unavailable and after the budget and contract amount have been exhausted. Currently, a contractor must provide the State with notice of the claim within 30 days after the basis of the claim is known or should have been known. The bill would allow the contractor to file a notice of claim "60 days after ... the later of: (1) a unit denying a request for equitable adjustment; or (2) the parties reaching an impasse in discussions attempting to resolve their disagreement regarding the request."

MDOT would like to note a potential increase in expenditures to the extent that interested parties successfully appeal bid protests due to the additional information that must be disclosed during debriefings and defending contract claims to MSBCA. Federal funds may not be used to pay court-ordered penalties, so Senate Bill 213 affects only general and special funds, even if federal funds are involved in payment of a contract.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating Senate Bill 213.

Respectfully submitted,

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