

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 403

(Senator McCray)

Budget and Taxation

State Procurement - Construction and Services - Contract Modification

This bill requires that State procurement contracts for construction and contracts for services include a clause that *requires* contract modification for the equitable adjustment of a contract for increased costs for compensation and benefits as a result of (1) statutory changes increasing required compensation or benefits or (2) collective bargaining.

Fiscal Summary

State Effect: Potential significant increase in procurement costs (all funds) due to contract modifications for higher labor costs resulting from changes in law or collective bargaining, but a reliable estimate is not feasible, as discussed below. Revenues are not affected.

Local Effect: The bill does not materially affect local governmental finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A contract modification is defined as a written alteration that (1) affects specifications, delivery point, date of delivery, period of performance, price, quantity, or other provisions of a procurement contract and (2) is accomplished by mutual action of the parties to a procurement contract.

“Equitable adjustment” refers to a change to a contract price or provision to compensate a contractor for additional costs.

Required Clauses

Every State procurement contract must have clauses covering:

- termination for default;
- termination wholly or partly by the State for its convenience if the head of the primary procurement unit determines that termination is appropriate;
- variations that occur between estimated and actual quantities of work in a procurement contract;
- liquidated damages, as appropriate;
- specified excuses for nonperformance;
- except for real property leases, the unilateral right of the State to order in writing: (1) changes in the work, if the changes are within the scope of the procurement contract and (2) a temporary stop or delay in performance;
- the obligation of the contractor to comply with the political contribution reporting requirements under State election law to which the contractor may be subject; and
- nonvisual access for information technology.

Additionally, procurement contracts for construction must include (1) a clause providing for contract modification if the condition of a site differs from the condition described in the specifications and (2) a clause covering the requirements for notice of contract claims, submission of contract claims and resolution of contract claims.

State Expenditures: The bill transfers risks associated with State contracts for construction and services entirely to the State, making the State solely responsible, without recourse or negotiation, for compensating a contractor for additional costs that the contractor incurs resulting from (1) a change in law regarding required compensation or benefits or (2) collective bargaining. As the definition of contract modification suggests, it is usually executed by mutual agreement of the State and a contractor. By requiring the State to approve a contract modification for specified costs incurred by a contractor, the bill removes any discretion or autonomy on the State's part and makes it liable for costs for which it may not be responsible.

Thus, the bill likely results in an increase in contract modifications that increase the cost of contracts resulting from a change in law or collective bargaining. As a result, the cost of contracting for construction and services likely increases, but these costs cannot be quantified, as the State cannot accurately predict the results of future legislative initiatives or collective bargaining negotiations.

Small Business Effect: Small businesses that enter into contracts with the State for construction or services could receive increased compensation for existing and future contracts that experience cost increases due to legislation or collective bargaining.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): University System of Maryland; Department of Budget and Management; Department of General Services; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Department of Legislative Services

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