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March 3, 2021

The Honorable Maggie McIntosh  
Chairman, House Appropriations Committee  
121 House Office Building  
Annapolis MD 21401

***Re: Letter of Opposition – House Bill 1091 – Emergency and Expedited Procurements – Reform***

Dear Chair McIntosh and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 1091 as it will significantly delay the processing of emergency procurements, which often require immediate actions and a thorough understanding of the situation in order to make appropriate decisions that both mitigate the situation and keep all impacted individuals safe.

House Bill 1091 re-defines “emergency” procurements and creates new approvals, processes, and reporting requirements. Additionally, House Bill 1091 requires MDOT and other state government agencies to receive approval from the Department of General Services (DGS) Chief Procurement Officer (CPO) before awarding an emergency procurement. This requirement will add time delays and prohibit MDOT from being able to mitigate an emergency situation effectively.

For instance, if a light rail line, roadway or Bridge is severely damaged due to an event of extreme weather, MDOT would need to procure emergency services and materials within hours to ensure the safety and welfare of travelers on Maryland’s transportation system. The emergency mitigation may include the purchase of services, goods, and contractors. Recently, a car fire caused damage to a bridge deck and MDOT needed to immediately engage the services of a firm to survey the safety of the structure. These types of situations require immediate action, so the citizens of Maryland are assured of their safety utilizing the infrastructure and so that police, fire, and ambulances have safe and direct routes to utilize when performing their duties. At a minimum, the DGS CPO would need detailed briefings and documentation related to the issue to understand and make appropriate ‘transportation’ related operational decisions in the requisite time frames.

Furthermore, House Bill 1091 appears to conflict or create confusion with current State Finance and Procurement Article § 11-101(e), which designates the CPO as a DGS position that does not oversee MDOT or the Maryland Transportation Authority (MDTA) procurements. MDOT is a primary procurement unit or control agency for procurements given the specific and technical nature of procurements as compared to other state entities. Also, under current law, the primary procurement unit or control agency for port-related procurements is the Maryland Port

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Commission, not MDOT, DGS or the CPO. MPA's statutory mission is uniquely business-oriented and has authority to act independently. MPA's ability to successfully perform its statutory mission in the competitive port environment depends greatly on MPA's ability to act with flexibility and independence, subject to Maryland Port Commission and Board of Public Works controls. This bill would impair that flexibility and independent authority for emergency procurements.

This bill will likely result in MDOT procurement offices needing additional procurement staff to meet the reporting and administrative requirements. Unfortunately, there isn't a precise way to determine the staffing requirements as it would be dependent upon the number of emergencies.

It is vital that emergency responses be fact specific. Given the inherent danger of many of MDOT's operations, emergencies can often involve large-scale safety and public health risks. Current law governing emergency procurement strikes the appropriate balance between giving MDOT the flexibility to quickly and effectively respond to fact-specific emergencies while, at the same time, providing adequate safeguards in the procurement process. We would also like to note that all emergency procurements require approval of the Agency Head. The Agency Head has that detailed knowledge of the potential operational impacts and the required time frames necessary to mitigate the situation in order to keep the public and employees safe. Further, all procurement officers must: (1) obtain as much competition as possible under the circumstances; and (2) limit the emergency procurement to the procurement of only those items, both in type and quantity, necessary to avoid or to mitigate serious damage to public health, safety, or welfare.

The Maryland Department of Transportation respectfully requests the Committee grant House Bill 1091 an unfavorable report.

Respectfully submitted,

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