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OFFICE OF THE SECRETARY

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BILL: Senate Bill 507
Procurement – Construction Contracts – Contract Modification Clause

COMMITTEE: Senate Budget and Taxation

DATE: February 16, 2022

POSITION: Letter of Information

Upon review of Senate Bill 507 – Procurement – Construction Contracts - Contract Modification Clause, the Maryland Department of General Services (DGS), provides these comments for your consideration.

This bill offers to compensate contractors for material cost increases for various reasons, most of which are already covered by DGS contracts. The bill also provides for material cost increases due to Force Majeure Events, including Endemics and Pandemics, which are beyond anyone’s control. Force Majeure is defined as “unforeseeable circumstances that prevent someone from fulfilling a contract”.

The burden of verifying costs would fall on the DGS Division of Design and Construction and Energy (DCE). DCE staff would be responsible to verify the actual material costs increases and if the cost increase was due entirely to an Endemic or Pandemic. **Since prices for these materials naturally fluctuate, regardless of whether or not there is a pandemic, verifying these cost increases would be difficult** for DCE staff; **particularly since DCE does not know the exact material costs that bids are based on; this information is determined and provided by the contractor/bidder.** There is no provision in Senate Bill 507 should material costs decrease due to a Force Majeure Event. When contractors are allowed to ask for increased pricing based upon market conditions, **it takes away the ability to have fair competition among contractors**; this competition is increased through the inclusion of fixed pricing in contracts.

Currently, **DGS has clauses in its contracts that allow for changes based on acts by the State or finding unknown hazards or conditions**, which a pandemic or endemic could fall under. **This bill places an undue burden on the State and potentially increases contract prices.**

For additional information, contact Ellen Robertson at 410-260-2908.

