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March 8, 2022

The Honorable Shane E. Pendergrass  
Chair, House Health and Government Operations Committee  
241 House Office Building  
Annapolis, MD 21401

***Re: Letter of Information – House Bill 1353 – Omnibus Procurement Reform Act  
("OPRA") of 2022***

Dear Chair Pendergrass and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on House Bill 1353 but offers the following information for the Committee's consideration.

House Bill 1353 would require procurement officers to expeditiously disclose the following information after execution and approval of a contract: (1) name of successful bidder/offeree; (2) technical and financial rankings and numerical ratings; (3) bid prices or financial proposals, including unit prices, unless disclosure would be inconsistent SFP 11-201(a); and (4) the Minority Business Enterprise (MBE) participation schedule, which identifies the certified MBEs that a bidder or offeror agrees to use in the performance of the contract, and the percentage of contract value attributed to each MBE.

If the contract award recommendation requires Board of Public Works (BPW) approval, then the name of the successful bidder, technical and financial rankings, and bid prices are already disclosed through BPW agenda items, which are available to the public. However, some of the information to be disclosed, such as the financial proposal, is proprietary and confidential, to guarantee that procurements can remain competitive. The Public Information Act (PIA) already requires disclosure upon request, subject to limitations and conditions stated in the PIA. The standard for disclosure stated in House Bill 1353 is inconsistent with the PIA and the privacy and confidentiality interests protected by the PIA.

House Bill 1353 also modifies the circumstances under which a unit may cancel a solicitation or reject all bids/proposals; when there is an appeal of such action, the unit must prove by clear and convincing evidence that the action was fiscally necessary and compliant with procurement policies.

If the Maryland State Board of Contract Appeals (MSBCA) sustains an appeal and finds that there has been a violation of law or regulation, then MSBCA will award compensable damages, including fees for attorneys, expert witnesses, and technical consultants. This may encourage more protests and appeals, which would burden procurement officers with additional workload, disrupt the procurement process, and delay contract awards.

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Furthermore, the majority of decisions issued in recent years affirmed those of the State Agencies, meaning that MSBCA found no violation of law or regulation.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating House Bill 1353.

Respectfully submitted,

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Maryland Department of Transportation  
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