

**WORKGROUP TO DEVELOP RECOMMENDATIONS
ON ISSUES RELATED TO
STATE PROCUREMENT FOR CONSTRUCTION CONTRACTS**

Senate Bill 826, 2016 Laws of Maryland, Chapter 580
House Bill 403, 2016 Laws of Maryland, Chapter 581

Study & Recommendations

December 2016

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor



Ellington E. Churchill, Jr.
Secretary

MARYLAND DEPARTMENT OF GENERAL SERVICES

FACILITIES OPERATIONS & MAINTENANCE • FACILITIES PLANNING, DESIGN, CONSTRUCTION & ENERGY
PROCUREMENT & LOGISTICS • REAL ESTATE

December 31, 2016

The Honorable Joan Carter Conway
Chair, Senate Education, Health & Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Peter A. Hammen
Chair, House Health & Government Operations Committee
Room 241, House Office Building
Annapolis, Maryland 21401

Dear Senator Conway and Delegate Hammen:

Pursuant to the 2016 Laws of Maryland, Chapters 580 and 581, the Secretary of the Department of General Services was required to convene a workgroup of stakeholders (Workgroup) to develop recommendations on issues related to State procurement for construction contracts.

The Workgroup was charged to address issues related to construction contracts including scope review process, termination for convenience, uniformity of change order practices and authority, prompt payment and interest, force account practices and policies, funding, contractor capacity and other issues the workgroup determined to be relevant and appropriate and to report on or before December 31, 2016 its policy, regulatory and legislative recommendations to the Chairs of the Senate Education, Health and Environmental Affairs Committee and the House Health and Government Operations Committee. Attached hereto is the report of the Workgroup to Develop Recommendations on Issues Related to State Procurement for Construction Contracts.

Should you have any questions, do not hesitate to contact me at 410-767-3174 or Lauren.Buckler@maryland.gov. It has been a pleasure to work with the dedicated members of this workgroup.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Buckler".

Lauren T. Buckler, PE, CEM
Assistant Secretary, Facilities Design & Construction

cc: Ellington Churchill Jr., Secretary Department of General Services
Members of the Workgroup

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**Workgroup to Develop Recommendations on Issues Related to
State Procurement for Construction Contracts**

I. Membership List

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Construction
Department of General Services

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Department of General Services

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Director of Construction
State Highway Administration

Karen Barbour
President/Founder
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Coalition for Contracting Fairness

Wayne R. Frazier, Sr.
President, MD Washington Minority
Contractors Association, Inc. [MWMCA]

Champe C. McCulloch
President, Maryland Chapter Associated
General Contractors of America [Maryland
AGC]

Tim Miller
Vice President
Freestate Electric
Alliance for Construction Excellence

II. Legislative Mandate

The Secretary of General Services shall convene a workgroup of stakeholders to develop recommendations that address the following issues related to State procurement for construction contracts:

1. scope review process
2. termination for convenience
3. uniformity of change order practices & authority
4. prompt payment and interest
5. force account practice & policies
6. funding
7. contractor capacity
8. any other issues that the workgroup determines to be relevant & appropriate to address

On or before December 31, 2016, the workgroup shall report its policy, regulatory and legislative recommendations to the Senate Education, Health, & Environmental Affairs Committee & the House Health & Government Operations Committee.

II. Meeting Schedule

The Workgroup held three public meetings. The meetings were scheduled on the following dates and times and were held at the State Center, 301 West Preston Street, Baltimore, MD 21201.

Monday, September 6, 1-4 pm
Monday, September 19, 1-4 pm
Wednesday, October 19, 1-4 pm

III. Change Order Process Today

The Code of Maryland Regulations (COMAR) defines a Change Order as “a written order signed by the responsible procurement officer, directing a contractor to make changes which the changes clause of a contract authorizes the procurement officer to order with or without consent of the contractor.”¹

There are several State Agencies with procurement authority for construction contracts. This includes: Maryland Department of General Services (DGS), University System of Maryland (USM), Maryland Department of Transportation (MDOT) and its business units, Maryland Port Commission, Maryland Stadium Authority (MSA), Maryland Department of Public Safety and Correctional Services (DPSCS), St. Mary’s College of Maryland, Morgan State University, and Maryland Environmental Services (MES). Each State Agency has different internal policies and procedures for the processing of Construction Change Orders and each has different delegated procurement authority dollar values from the Board of Public Works.

State Agency	Delegation of Authority for Change Orders	Reference
Maryland Dept. of General Services	\$50,000	COMAR 21.02.01.04
University System of Maryland	\$1,000,000	USM
Maryland Department of Transportation	\$50,000	COMAR 21.02.01.04
Maryland Port Commission	\$50,000	COMAR 21.02.01.04
Maryland Stadium Authority	Delegated to the MSA Board	MSA
Maryland Dept. of Public Safety and Correctional Services	\$50,000	COMAR 21.02.01.04
St. Mary’s College of Maryland	\$1,000,000	St. Mary’s
Morgan State University	\$1,000,000	MSU
Maryland Environmental Services	Contracts exceeding \$250,000	MES

In 2016, House Bill 403 and Senate Bill 826, the Change Order Fairness Act was passed and has now been codified as §15-112 of the State Finance and Procurement Article of the Annotated Code of Maryland. The legislation addressed the construction contracting community’s concerns regarding documentation of Change Orders prior to initiating work on a change order.

¹ COMAR 21.01.02.01B(16).

IV. Workgroup Recommendations

SCOPE REVIEW PROCESS

Scope is the description of work to be included in the project. The workgroup discussed scope issues at several points in the construction process including before the project is advertised for bid, once the project is advertised for bid and after the project has been awarded. The recommendations aim to increase clarity of the scope review process for all parties.

1) Bid Timing

The pre-bid meeting should be held closer to the bid due date, this will generate more questions as the contractors are more likely to have reviewed the documents, but it must still occur before the questions are due. Pre-bid dates are currently set individually for each solicitation in a procurement. The date can be changed by the procurement officer.

2) Bid Question Cut Off Date

State Units will create language in Invitation for Bid (IFB) documents to indicate that questions can be submitted after the question cut-off date, but will only be answered at the discretion of the Procurement Officer at the State Unit issuing the IFB if the State Unit determines it is in the best interest of the project.

Setting a cutoff date is necessary to ensure questions are answered before a bid opening, however, currently it is common practice within State Agencies to review questions received after the cutoff date and if the Procurement Officer makes a determination that the question will affect the outcome of the bid the Procurement Officer may respond by supplying all bidders with the question and appropriate response.

3) Pre-Bid Meetings

Pre-Bid meetings should allow flexibility based on the project type, complexity level of the projects, security of the facilities the project is within or existing site/building complications. The more complicated projects should require pre-bid meetings in person. Other projects that are less complex should allow conference call pre-bid meetings or the elimination of a pre-bid meeting at the discretion of the procurement officer.

Each State Agency currently has different policies and procedures for pre-bid meetings.

4) Pre-Construction Meetings (After Contract Award)

Primes should notify Subcontractors of pre-construction meetings. The State should have the ability to require a Sub-Contractor's attendance when the State determines it is in their best interest.

5) Drawing Coordination

State Units should consider creating Searchable PDFs (PDF plans from CADD or ensure plans are searchable when scanned into PDFs). The State should consider issuing these on eMarylandMarketplace with the bid documents. This allows primes and sub-contractors to search key words and find areas of work on design discipline drawings quickly. This can be done by a contract manager.

6) Re-Bids

The State should attempt to make any major changes to scope or solicitation documents in re-bid situations more obvious by issuing a list of changes from the original bid or highlighting the changes from the original bid. This list of changes is provided as an aid to the contractor but shall not be relied upon by the contractor, and in the event that an unlisted change appears in the contract drawings or specifications, the contractor shall not be entitled to any additional payments for unlisted changes. This can be done by the Procurement Officer.

7) Alternates

If a contractor believes additional alternates are required or beneficial to allow for better pricing this should be questioned during the pre-bid meeting or in writing with questions during the solicitation period. If the suggestion is accepted the State can issue an addendum during the bid period to reflect this change.

If the alternate suggestions are not accepted and issued as addendum, the bidders should comply with the official solicitation documents when submitting a price.

Consistent with their procurement policies and procedures, agencies exempt from Division II of the State Finance and Procurement Article should have the flexibility of accepting voluntary alternates without amending the solicitation documents.

TERMINATION FOR CONVENIENCE

Termination for Convenience is a standard contract clause for State Construction contracts. It allows for the State to terminate the contract of the prime for the convenience of the State.

It was agreed there are no issues related to this topic and associated with Change Orders for Construction projects.

UNIFORMITY OF CHANGE ORDER PRACTICES & AUTHORITY

Change Order practices and authority levels currently vary by State Agency. A chart of authority levels is provided in *Section III Change Order Process Today*.

1) BPW Threshold

Increase the threshold for Changes Orders to the Board of Public Works to be equal for State Units subject to Division II at \$1,000,000 (the current highest limit). This would create a uniformity between these State Agencies and make the process easier to navigate for the business community.

At the November 16, 2016 BPW, the board approved the public review of a change to COMAR to increase the delegated authority of Agencies currently at \$50,000 to \$200,000 in delegated Change Order Authority.

2) Processing Time

USM Procurement Change Order processing and software should be evaluated as a potential model for other State Units to expedite Change Order Processing. USM cut procurement processing to an average of 15 days. This does not include project management or construction inspection processing time.

Each State Agency should evaluate its current processing time and determine if an electronic system would reduce the processing time for Change Orders.

3) Change Order Acknowledgement Timeframe

State Units should include in published Change Order guidelines the typical timeframes for all activities including responses to these notifications from Contractors.

4) Pre-Bid Meetings

Include in the State Unit Guidelines on Change Orders, or other appropriate published Agency Guidelines, a discussion of pre-bids and how that State Unit typically handles these meetings. Discuss any requirements of these meetings.

5) Pre-Construction Meetings (After Contract Award)

Issue State Unit Change Order Guidelines on State Unit Websites where sub-contractors can access procedures and timelines for typical projects.

6) Change Order Process

The State should include a discussion of the Change Order process at all pre-construction meetings to ensure all members of the project team understand the steps and documentation required. This can be done by the Contract Manager.

7) Change Order Law Effective Date

It is unclear if the new law applies to change orders for contracts approved after the date the law took place, or if it applies to all change orders that occur after the law takes place regardless of when the contract was executed.

DGS has requested the Attorney General Contract Litigation Division review and provide an opinion in order to ensure it is a uniform opinion for all State Units managing construction contracts. An opinion was not available at the time of report issuance.

8) Solicitation Reference Documents

Invitation for Bid or Request for Proposal Solicitation documents include references to other documents. The Federal Government has created a standard section of these references that is used in all division procurements. It is recommended that the State create a uniform document that is used as a baseline in all State Agency procurements and can be modified to reflect the specific needs and requirements of the agency and provides clear links or references to these documents so they can easily be located by Contractors.

The Commission to Modernize State Procurement recommendations include creating standard procurement documents. This workgroup concurs with this recommendation.

9) Submittal Process

The State should include in the published Change Order guidelines a discussion of the submittal process at all pre-construction meetings to ensure all members of the project team understand the steps and documentation required. The submittal process should cover all types of submittals required by the specifications including shop drawings.

PROMPT PAYMENT & INTEREST

State Finance & Procurement §15-103 requires payment by the State under a procurement contract within 30 days of receipt of a proper invoice. Section 15-266 requires a subcontractor be paid an undisputed amount by a prime contractor within 10 days of the prime receiving payment from the State.

1) Delegation of Authority

State Units delegate levels of procurement authority internally to each agency. These delegations give specific individuals or employee classification authority to sign documents up to a certain dollar amount. State Units should publish delegations of authority for Change Orders within the change order guidelines or include these delegations in each contract. This allows contractors to verify that the appropriate person has provided approval.

2) State Contact Information

State Units should provide contact information in published Change Order guidelines. The contact information for the procurement officer should be included for the Primes to use in the bonding process. The project hierarchy for payment disputes and State Unit responses should be provided. This offers an avenue for Sub-Contractors to retrieve the information without requesting it from the Prime Contractor.

3) Prime Bonds

Provide directions in the State Unit Change Order guidelines on how subcontractors can contact the procurement officer to receive payment bond information on the prime, if needed.

4) Prime Payments Public

The State should overhaul its Financial Management Information System (FMIS) to allow subcontractors to see the breakdown of payments to primes. Until this system is overhauled, contact information should be made available through each State Unit's published Change Order guidelines.

FORCE ACCOUNT PRACTICES & POLICIES

Force Account work is work directed by the State to a Contractor for which there is no agreed upon price. The labor, materials, and equipment are accounted for by the contractor and verified by the State as the work is performed and then billed and paid accordingly.

1) Funding Force Account Work

State Units should issue "Partial Payment" with Change Orders for undisputed Force Account work to allow the contractor to start billing for work that has been accepted by the Owner. It should be stated in the Change Order that this is not the full amount for the work and negotiations are on-going, thus making it clear that the Change Order is a partial payment. Another option is for the State to issue a Unilateral Change Order with State approved amounts that allows for billing to begin. This is preferable to issuing a change order for scope with no dollar amount while the dollar amount is tabulated, which would prevent a contractor from billing until a second change order was issued with a dollar amount.

2) Tracking Force Account Work

If a second Change Order is issued, provide it with the same Change Order Number followed by a letter to indicate the relationship between the change orders for the Procurement Agency Activity Report (PAAR) and tracking. The PAAR is a report from State procurement agencies to the Board of Public Works (BPW) on procurements that do not go to BPW for approval.

FMIS modifications or overhaul of the system are required to allow connected change orders. State Units should investigate modification options.

3) Delay Costs

The contractor should submit delay costs associated with a force account change order as a separate Proposed Change Order from the Force Account Change Order.

4) Estimate

After the contractor has provided a price for change order work, if the State Unit does not agree based on their estimate, the estimate (if applicable) should be provided to the contractor as part of the price negotiations.

This allows the contractor and the State to determine gaps in estimates and work towards an appropriate scope and cost.

PROJECT FUNDING

Project funding is the amount of money available for each project. There were discussions on fund sources, processes and contingencies.

No Recommendations were generated from the Workgroup.

CONTRACTOR CAPACITY & STATE CAPACITY

Capacity is the ability and availability of Staff for both the Contractor and the State to perform the required work.

1) State Staff Quality vs. Quantity

Some State Agencies use contractual staff for contract management. Contractors see a difference in the authority abilities of these staff which can delay decisions. State Agencies using contractual staff will investigate the contractual Project Manager's authority levels, timelines and assessments of contracts.

2) Procurement Staffing

Contractors perceive a difference in the way State Procurement Officers handle contracts vs. the way Federal Procurement Officers respond. The federal response is stronger while State issues are deferred back to the Project Managers.

State Units should look at the role of a Federal Contract Officer vs. the role of a State Procurement Officer and determine if changes should be made to the division of duties between the State Project Manager and State Procurement Officer.

3) SHA ADA Projects

SHA ADA projects have a long punchlist process due to the availability of inspectors to inspect these projects. SHA should provide more ADA inspectors to get through punch list and substantial completion review/walk through in a shorter time period. This allows contractors to close out these projects faster and pursue other contract opportunities. SHA is investigating this issue.

RETENTION POLICIES

Retainage is payment withheld from the contractor by the State during the construction contract. This funding is held until all work has been satisfactorily completed.

1) Retainage of Completed Tasks

Per COMAR 21.06.06 the State may not withhold more than 5% of the payment for completed work until the project's completion. State Units currently utilize flexibility on a project by project basis to reduce retainage at

certain stages in the project if the work is proceeding in a satisfactory manner and the State has no concerns about deficiencies in completed work or punchlist work.

The State should continue the practice of releasing retainage or reducing retainage on a project by project basis. Primes should bring up the issues at progress meetings and discuss reducing or releasing if it is impacting their Subcontractors.

2) Retainage on Completed Tasks

Subcontractors have the ability to negotiate separate subcontractor agreements with the Prime Contractor. If a Subcontractor is concerned about retainage after work is completed the Subcontractor should include in their contract with the Prime a clause to reduce retainage when their work is complete.

3) Operation & Maintenance Manuals

Operation and Maintenance Manuals are one of the last items supplied in a contract. These manuals must be reviewed and approved by the Architect/Engineer (A/E) of record and Owner. This review process delays final payment for contractors and can delay release of retention.

State Agencies should enforce their contract obligation for the A/E's to provide reviews of the Operation & Maintenance Manual (O&M) at a faster pace so there will be no delay in release of final payment and retainage release.

4) Change Order Guidelines

State Units should add to published Change Order guidelines a section on Retainage. This section should include contact information for State Staff that are authorized to negotiate project retainage amounts. This section should also explain that the intent of the retainage is to ensure punch list items are completed at the end of a project and that deficiencies in work are corrected.

GENERAL RECOMMENDATIONS

1) Responding to Requests

Responses to a request from a Contractor to the State or from the State to the Contractor should be provided in a timely manner.

2) Procurement Reform

The workgroup concurs with the Commission to Modernize State Procurement recommendation to centralize the collection and review of routine contractor documents that are required with bids.

V. Appendix

Meeting Minutes
Copy of Legislation



MEETING MINUTES

STATE OF MARYLAND - DEPARTMENT OF GENERAL SERVICES
 Office of Facilities Planning, Design and Construction
 301 West Preston Street, Suite 1400
 Baltimore, Maryland 21201

CHANGE ORDER WORKGROUP

MEETING NO. : 1

DATE: September 6, 2016

LOCATION: 11th Floor Olmstead Conference Room

MINUTES ISSUED:

PARTICIPANTS	AGENCY	ATTEND	COPY	E-MAIL ADDRESS	TELEPHONE
Lauren Buckler	DGS	X		Lauren.buckler@maryland.gov	410-767-3174
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Tim Miller	Freestate Electric	X		tmiller@aeselectrical.com	301-509-3814
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WORKGROUP SYNOPSIS:

Work Group Members (excluding units of the State):

House Bill 403, Chapter 581 of the 2016 Session of the Maryland General Assembly established a workgroup of stakeholders to develop recommendations that address issues related to State procurement for construction contracts including scope review process, termination for convenience, uniformity of change order practices & authority, prompt payment & interest, force account practice & policies, funding, contractor capacity and other issues the workgroup determines to be relevant & appropriate.

OLD BUSINESS:

Item No. Action Topic Item

N/A			
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NEW BUSINESS:

General

Item No. Action Topic Item

1.1		Regulations	Legislation requires State Unit Guidelines be issued by 12/31/16 and Board of Public Work Regulations by 1/1/17
1.2		BPW	RECOMMENDATION: Invite a representative from BPW to attend these workgroup meetings and send them notification of meeting minutes.
1.3			

Scope Review Process

Item No. Action Topic Item

1.1		BIM	Should BIM be required for design? When owners are requiring BIM for design are contractors seeing less change orders and more coordinated designs?
1.2	Champe	Best Owners	Champe to reach out to his membership to request names of owners that are producing good design documents. These owners can then be queried to determine what they are doing different then the State, including requiring BIM, allowing different bid timeframes, placing additional requirements on their A/E's, allowing higher fees from A/E's, etc.
1.3		Plan Detail	- There is a lack of detail in some drawings, many are not 100% complete - Sub-contractors shop drawing are sometimes used for contract docs? Does this cause a need for change orders? - How does a contractor come to a price when there are aspects left to the imagination? -How does the State improve the level of detail on Design documents?
1.4		Bid Process	A 2 tier bid for construction was suggested, where the 3 lowest qualified bidders would move to a 2 nd round with more detailed design discussion with the design team and owner, then bid again or value engineer. The suggestion was unfavorable to both State and Contractor representatives in the room for the increase in time required and the creating of gray area on bid assessments.
1.5		Scope Review	What scope of review is being done in other parts of the State that could be incorporated into the review process? - Constructive review of docs occurs before the project is sent out to bid, in some State Units this is outsourced to a different engineering firm then designed the project, for some it is performed in house -Review of plans prior to bid advertisement creates a conflict of interest for bids provided by vendors that saw the documents in advance -Suggestion included creating a blind review by vendors, where the vendors name is not released. Contractors and the State Units agreed this created greater conflicts - Contractors do not delve deep into the specs until closer to the bid date (approx. two weeks out)
1.6		Bid Timing	During the pre-bid meeting is there a way to allow more questions to clarify project docs? Would more questions come in if the pre-bid meeting was held closer or further from the bid date? RECOMMENDATION: The pre-bid should be held closer to the bid date, this will generate more questions as the contractors are more likely to have reviewed the documents, but it must still occur before the questions are due.
1.7		Question	21 days minimum to advertise a bid- what is a better timeline?

		Timing	- should there be a delay in bid opening in order to correct issues that are obvious in the specs and drawing, and to issue addendums to clarify?
1.8		Bid Question Cut-Off	Contractors have questions after the question cutoff date, a request was made to extend the question cut-off dates. The State Units concurred that if a question is submitted after the cut-off date that is substantial, that it will be answered or the bid date will be extended, however there must be a question cut-off date. RECOMMENDATION: State Units will create language in Invitation to Bid Documents to indicate that questions can be submitted after the question cut-off date but will only be answered at the discretion of the State Unit issuing the ITB if they determine it to be in the best interest of the project.
1.9		Pre-Bid Meetings	State Units are interpreting if pre-bid meetings are required differently. Some units do not hold unless the project is of decent size and complication, some units hold conference calls and some units are mandated to hold in person meetings if there is an MBE goal. RECOMMENDATION: Pre-Bid meetings should be at the discretion of the project type, complicated projects, secure facilities or existing site/building complications should require pre-bid meetings in person. Other projects should not or allow conference call pre-bids RECOMMENDATION: Include in State Unit Guidelines on Change Orders a discussion of pre-bids and how that Unit of the State typically handles.
1.10		Pre-Construction Meetings	Sub-contractors are not always provided the same information as the prime contractors about how to complete change order forms and the timelines associated. Requiring sub-contractors to attend the pre-construction meeting was dismissed as not all of the sub's are on-board at this point, creating a 2 nd sub pre-construction meeting later in the project was also dismissed as to time intensive. RECOMMENDATION: Issue State Unit Change Order Guidelines on State Unit Websites where sub-contractors can access procedures and timelines for typical projects
1.11		Drawing Coordination	A/E's routinely indicate areas of trade work on different discipline drawings. For example, electrical work is shown on the electrical drawings, but there may be some shown on the landscape plans. The Electrical sub-contractor only reviews the electrical plans and misses the landscape work creating a scope gap and change order to the prime contractor. RECOMMENDATION: State Units create/issue Searchable PDFs (PDF plans from CADD or ensure they are searchable when scanned in). Issue these on eMM with the bid documents. This allows primes and sub-contractors to search key words and find areas of work on other design discipline drawings quickly.
1.12		Re-Bids	When a project is re-bid and changes are made to the bid documents, contractors have a challenging time finding these changes. RECOMMENDATION: Make changes in re-bid situation more obvious but issuing a list or highlighting the changes in some fashion.

Termination for Convenience

Item No. Action Topic Item

1.1		No Comments	It was agreed there are no issues related to this topic and associated with Change Orders for Construction Projects

Uniformity of Change Order Practices & Authority

Item No. Action Topic Item

1.1		BPW Threshold	There is a variation in approval thresholds for State Units. The lowest threshold for Change Order approval is \$50,000 and above must go to the Board of Public Works. This adds time to process change orders and creates delays for payment for primes and sub-contractors.
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			RECOMMENDATION: Increase the threshold for Changes Orders to the Board of Public Works to be equal for all State Units at \$1,000,000 (the current highest limit)
1.2		Processing Time	USM College Park procurement has been able to reduce <i>procurement's</i> change order processing time <i>to an average of 15 days</i> by implementing a new electronic project management system called, EBuilder software. http://www.e-builder.net/ RECOMMENDATION: USM Change order processing and software be used as a model for other State Units to expedite Change Order Processing.
1.3		Change Order Acknowledgement Timeframe	Contractors are required per COMAR to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. RECOMMENDATION: State Units include in published guidelines the typical timeframes for all activities including responses to these notifications from Contractors.

NEXT MEETING: THE NEXT MEETING WILL BE HELD ON **September 19th, AT 1pm, AT 301 West Preston St., 11th Floor Olmstead Conference Room.**

The above reflects the author's understanding of discussions held at this meeting. Any discrepancies in these minutes should be addressed to the author within seven (7) days. If no comments are received within seven (7) days, these minutes shall stand as written.

Respectfully submitted,

STATE OF MARYLAND – DEPARTMENT OF GENERAL SERVICES

Lauren Buckler

Lauren Buckler
Assist. Secretary- Design & Construction



MEETING MINUTES

STATE OF MARYLAND - DEPARTMENT OF GENERAL SERVICES
 Office of Facilities Planning, Design and Construction
 301 West Preston Street, Suite 1400
 Baltimore, Maryland 21201

CHANGE ORDER WORKGROUP

MEETING NO. : 2
 DATE: September 19, 2016
 LOCATION: 11th Floor Olmstead Conference Room

MINUTES ISSUED:

PARTICIPANTS	AGENCY	ATTEND	COPY	E-MAIL ADDRESS	TELEPHONE
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Tim Case	DGS	X		Timothy.case@maryland.gov	410-767-5882
Ellen Robertson	DGS	X		Ellen.robertson@maryland.gov	410-260-2908
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Robert Martinazzi	USM	X		robazzi@umd.edu	301-314-5924
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WORKGROUP SYNOPSIS:

Work Group Members (excluding units of the State):

House Bill 403, Chapter 581 of the 2016 Session of the Maryland General Assembly established a workgroup of stakeholders to develop recommendations that address issues related to State procurement for construction contracts including scope review process, termination for convenience, uniformity of change order practices & authority, prompt payment & interest, force account practice & policies, funding, contractor capacity and other issues the workgroup determines to be relevant & appropriate.

OLD BUSINESS:

General

Item No.	Action	Topic	Item
1.1		Regulations	Legislation requires State Unit Guidelines be issued by 12/31/16 and Board of Public Work Regulations by 1/1/17
1.2		BPW	RECOMMENDATION: Invite a representative from BPW to attend these workgroup meetings and send them notification of meeting minutes.
1.3			

Scope Review Process

Item No.	Action	Topic	Item
1.1		BIM	Should BIM be required for design? When owners are requiring BIM for design are contractors seeing less change orders and more coordinated designs?
1.2	Champe	Best Owners	Champe to reach out to his membership to request names of owners that are producing good design documents. These owners can then be queried to determine what they are doing different then the State, including requiring BIM, allowing different bid timeframes, placing additional requirements on their A/E's, allowing higher fees from A/E's, etc.
1.3		Plan Detail	- There is a lack of detail in some drawings, many are not 100% complete - Subcontractors shop drawings are sometimes used for contract docs? Does this cause a need for change orders? - How does a contractor come to a price when there are aspects left to the imagination? -How does the State improve the level of detail on Design documents?
1.4		Bid Process	A 2 tier bid for construction was suggested, where the 3 lowest qualified bidders would move to a 2 nd round with more detailed design discussion with the design team and owner, then bid again or value engineer. The suggestion was unfavorable to both State and Contractor representatives in the room for the increase in time required and the creating of gray area on bid assessments.
1.5		Scope Review	What scope of review is being done in other parts of the State that could be incorporated into the review process? - Constructive review of docs occurs before the project is sent out to bid, in some State Units this is outsourced to a different engineering firm then designed the project, for some it is performed in house -Review of plans prior to bid advertisement creates a conflict of interest for bids provided by vendors that saw the documents in advance -Suggestion included creating a blind review by vendors, where the vendors name is not released. Contractors and the State Units agreed this created greater conflicts - Contractors do not delve deep into the specs until closer to the bid date (approx. two weeks out)
1.6		Bid Timing	During the pre-bid meeting is there a way to allow more questions to clarify project docs? Would more questions come in if the pre-bid meeting was held closer or further from the bid date? RECOMMENDATION: The pre-bid should be held closer to the bid date, this will generate more questions as the contractors are more likely to have reviewed the documents, but it must still occur before the questions are due.
1.7		Question Timing	21 days minimum to advertise a bid- what is a better timeline? - should there be a delay in bid opening in order to correct issues that are

			obvious in the specs and drawing, and to issue addendums to clarify?
1.8		Bid Question Cut-Off	Contractors have questions after the question cutoff date, a request was made to extend the question cut-off dates. The State Units concurred that if a question is submitted after the cut-off date that is substantial, that it will be answered or the bid date will be extended, however there must be a question cut-off date. RECOMMENDATION: State Units will create language in Invitation to Bid Documents to indicate that questions can be submitted after the question cut-off date but will only be answered at the discretion of the State Unit issuing the ITB if they determine it to be in the best interest of the project.
1.9		Pre-Bid Meetings	State Units are interpreting if pre-bid meetings are required differently. Some units do not hold unless the project is of decent size and complication, some units hold conference calls and some units are mandated to hold in person meetings if there is an MBE goal. RECOMMENDATION: Pre-Bid meetings should be at the discretion of the project type, complicated projects, secure facilities or existing site/building complications should require pre-bid meetings in person. Other projects should not or allow conference call pre-bids RECOMMENDATION: Include in State Unit Guidelines on Change Orders a discussion of pre-bids and how that Unit of the State typically handles.
1.10		Pre-Construction Meetings	Sub-contractors are not always provided the same information as the prime contractors about how to complete change order forms and the timelines associated. Requiring sub-contractors to attend the pre-construction meeting was dismissed as not all of the subcontractors are on-board at this point, creating a 2 nd sub pre-construction meeting later in the project was also dismissed as to time intensive. RECOMMENDATION: Issue State Unit Change Order Guidelines on State Unit Websites where sub-contractors can access procedures and timelines for typical projects RECOMMENDATION: Primes should notify Subcontractors of pre-construction meetings and allow the Sub's to attend if they would like to, but not require sub-contractor attendance
1.11		Drawing Coordination	A/E's routinely indicate areas of trade work on different discipline drawings. For example, electrical work is shown on the electrical drawings, but there may be some shown on the landscape plans. The Electrical sub-contractor only reviews the electrical plans and misses the landscape work creating a scope gap and change order to the prime contractor. RECOMMENDATION: State Units create/issue Searchable PDFs (PDF plans from CADD or ensure they are searchable when scanned in). Issue these on eMaryland Marketplace with the bid documents. This allows primes and sub-contractors to search key words and find areas of work on other design discipline drawings quickly.
1.12		Re-Bids	When a project is re-bid and changes are made to the bid documents, contractors have a challenging time finding these changes. RECOMMENDATION: Make changes in re-bid situation more obvious but issuing a list or highlighting the changes in some fashion.

Termination for Convenience

Item No. Action Topic Item

1.1		No Comments	It was agreed there are no issues related to this topic and associated with Change Orders for Construction Projects

Uniformity of Change Order Practices & Authority

Item No. Action Topic Item

1.1		BPW Threshold	There is a variation in approval thresholds for State Units. The lowest threshold for Change Order approval is \$50,000 and above must go to the
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			Board of Public Works. This adds time to process change orders and creates delays for payment for primes and sub-contractors. RECOMMENDATION: Increase the threshold for Changes Orders to the Board of Public Works to be equal for all State Units at \$1,000,000 (the current highest limit)
1.2		Processing Time	USM College Park procurement has been able to reduce <i>procurement's</i> change order processing time <i>to an average of 15 days</i> by implementing a new electronic project management system called, EBuilder software. http://www.e-builder.net/ RECOMMENDATION: USM Change order processing and software be used as a model for other State Units to expedite Change Order Processing.
1.3		Change Order Acknowledgement Timeframe	Contractors are required per COMAR to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. RECOMMENDATION: State Units include in published guidelines the typical timeframes for all activities including responses to these notifications from Contractors.

NEW BUSINESS:

General

Item No. Action Topic Item

2.1		Bid Review	Discussion on the review of the low bid with the low bidder and subs to allow discovery of scope issues prior to the Notice to Proceed. If issues were discovered the project would require a re-bid or a rejection of the low bidder and move to the next bidder.
2.2		Change Order Acknowledgement Timeframe	Contractors are required, per COMAR, to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. Recommendations for 30 days were discussed, however concern arose that the State may wait 30 days because they can. 15 Days also discussed. Suggestion that if no response was provided by the State to a price proposal that this be considered acceptance. State Units firmly disagreed that lack of response cannot equal acceptance. RECOMMENDATION: It is good communication practice to respond to requests timely, if responses are not being received seek answers up the chain of command
2.3		Alternatives	Alternatives can be included in any State Contract at the digression of the Unit of State Government. RECOMMENDATION: If Contractors believe additional alternates are required to allow for better pricing this should be questioned during the pre-bid question period.
2.4		Procurement Reform	Discussion on the various State Procurement Reform Activities. Including collection of Routine contractor documents required with bids. Current eMaryland Marketplace cannot handle the centralized collection. RECOMMENDATION: Concur with Procurement Reform Recommendations to centralize the collection and review of these documents

Prompt Payment & Interest

Item No. Action Topic Item

2.1		State Resources	Discussion on increasing State Resources to reduce processing times for changes orders. Agencies discussed how the internal bureaucratic process is the predominant cause of the long timelines, not the number of staff involved. Particularly the antiquated FMIS system (Maryland's Financial Management
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			Information System).
2.2		SHA CO Letter	The legislation allows SHA and MAA to provide a letter in lieu of a Change Order. How does this letter relate to billing for the Change Order and when does interest become applicable? How is this letter binding against federal funding?
2.3		Delegation of Authority	Discussion on providing transparent information on delegation of authority, specifically for various levels of change order approval so the contractor can be assured that the person approving the change order has authority to do so. State needs to distinguish between authority to negotiate and authority to approve. RECOMMENDATION: State Units publish delegations of authority for Change Orders within the change order guidelines or include in each contract.
2.4		State Contact Information	Discussion on transparency for whom to contact within State Units when project contacts are not responsive. Or when Prime Contractors are not responsive to Sub-contractors. RECOMMENDATION: State Units provide contact information in Change Order published guidelines. Include procurement officer for bond information on the Prime, include project hierarchy for payment disputes and State Unit responsive issues.
2.5		Prime Bonds	Discussion on the bond information for the prime. Suggested forcing Primes to provide this to the Sub's in sub-contractor contracts, however the State would have to collect and review sub-contractor contracts in order to ensure. RECOMMENDATION: Provide directions in the State Unit Change Order Guidelines on how Subcontractors can contact the procurement officer to receive payment bond information on the prime if needed.
2.6		Prime Payments Public	Subcontractor would like to be able to see when the prime is paid and if that payment included their items of work. DC passed a law that requires an online system to allow subcontractor to see this information, but the details have not been worked out yet. San Antonio has a public system, but it's not broken down well making it difficult to use. State Units currently receive calls from Subcontractors to confirm Prime payment and provide information to the Subcontractors. States current FMIS (Financial Management Information System), does not have the detailed invoice breakdowns, just the total amount paid to the prime. Information cannot be extracted from this system that would answer these questions. MBE's should not encounter this issue as they are required to file monthly the amount they were paid and the Primes are required to file the amount they paid their MBE's monthly with the State reviewing and reconciling. Suggested that the State charge vendors to use an electronic application that would show the payment breakdown of the prime. The State used to charge for eMaryland Marketplace, but this was made illegal as the State cannot charge vendors to do business with Maryland. State currently does not allow electronic invoices. BPW is proposing new regulations that would allow electronic invoices. These new regulations should be in the Maryland Register in a few weeks for public comment. RECOMMENDATION: State overhaul FMIS and allow capability for subcontractors to see the breakdown of payments to primes. Until this system overhaul, make contact information available through State Unit change order guidelines for whom a subcontractor can contact to get this information.
2.7		Interest	Newly proposed BPW regulations will require a separate invoice to be submitted for the late payment interest.
2.8		Change Order Contingency	Discussion on the State carrying a change order contingency on the contract as a line item to allow faster payment for change orders. SHA previously carried this line item but it was removed as a result of legislative audits. If the line item is carried it is also included in the MBE/DBE/WBE percentages for work that is unknown and uncontracted at bid time.

Force Account Practice & Policies

Item No. Action Topic Item

2.1		Funding Force Account	<p>Previously Force Account work did not require a change order to start. The change order was completed after the time & materials work was completed and verified. With the new law, a change order must be issued first stating the scope and that work is to proceed as force account. This change order could have \$0 since costs are unknown. Or it could have a ‘Partial Payment’. If the initial CO has no funds, there are then no funds transferred to pay invoices associated with this work. A 2nd Change Order would need to be issued to transfer the funds to the project.</p> <p>Unilateral Change Orders could be issued instead of force account and the contractor would have to issue a claim later to resolve payment discrepancies. Unilateral Change Orders were/are not preferred by the contractors.</p> <p>RECOMMENDATION: Issue “Partial Payment” with Change Orders for Force Account to allow the contractor to start billing for work as work is completed. State in the change order that this is not the full amount for the work and negotiations are on-going.</p>
2.2		Tracking Force Account	<p>Force Account Change Orders may require 2 or more change orders to transfer the full funding to the project. Some of these additional change orders may just be issued within the State for the funding</p> <p>RECOMMENDATION: If a second change order is issued, provide it with the same Change Order Number then a letter to indicate the relationship between the change orders for PAAR reports and tracking. PAAR = Procurement Agency Activity Report, this is a report from State procurement agencies to the Board of Public Works (BPW) on procurements that do not go to BPW for approval.</p>
2.3		Delay Costs	<p>Force Account work could cause delays to the overall contract and the contractor could incur additional costs for these delays.</p> <p>RECOMMENDATION: Submit delay costs as a separate Proposed Change Order from the Force Account Change Order.</p>
2.4		Dollar Limit	Discussion on reasonable dollar amounts of the force account work.
2.5		Engineers Estimate	<p>When the State and the Contractor are negotiating a change order the delta amount needs to be beneficial for both the State entities and the contractor. Since the contractor is providing their cost breakdown, should the State provide their engineers estimate for the contractor to see?</p> <p>RECOMMENDATION: After the contractor has provided a price for change order work, if the State Unit does not agree based on their engineers estimate, the engineers estimate should be provided to the contractor as part of the price negotiations.</p>

NEXT MEETING TOPICS:

Project Funding

Item No. Action Topic Item

3.1			
3.2			

Contractor Capacity

Item No. Action Topic Item

3.1			
3.2			

Retention – State’s Retention Policies

Item No. Action Topic Item

3.1			
3.2			

NEXT MEETING: THE NEXT MEETING WILL BE HELD ON **October 19th, AT 1pm, AT 301 West Preston St., 11th Floor Olmstead Conference Room.**

The above reflects the author’s understanding of discussions held at this meeting. Any discrepancies in these minutes should be addressed to the author within seven (7) days. If no comments are received within seven (7) days, these minutes shall stand as written.

Respectfully submitted,

STATE OF MARYLAND – DEPARTMENT OF GENERAL SERVICES

Lauren Buckler

Lauren Buckler
Assist. Secretary- Design & Construction



MEETING MINUTES

STATE OF MARYLAND - DEPARTMENT OF GENERAL SERVICES
 Office of Facilities Planning, Design and Construction
 301 West Preston Street, Suite 1400
 Baltimore, Maryland 21201

CHANGE ORDER WORKGROUP

MEETING NO. : 3
DATE: October 19, 2016
LOCATION: 11th Floor Olmstead Conference Room

MINUTES ISSUED:

PARTICIPANTS	AGENCY	ATTEND	COPY	E-MAIL ADDRESS	TELEPHONE
Lauren Buckler	DGS	X		Lauren.buckler@maryland.gov	410-767-3174
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Ike Casey	ASA Metro DC		X	ike@asamw.org	571-237-7101
Tim Miller	Freestate Electric		X	tmiller@aeselectrical.com	301-509-3814
Steven Marciszewski	State Highway	X		smarciszewski@sha.state.md.us	443-572-5235
John Trueschler	TSO		X	jtrueschler@mdot.state.md.us	410-865-1090
Wayne Frazier	MWMCA		X	wrf@mwmca.org	443-324-2094
John Thornton	MPA	X		jthornton@marylandports.com	410-385-4850
David Bezanson	DPSCS	X		David.bezanson@maryland.gov	410-339-5068
Champe McCulloch	AGC	X		champe@marylandagc.org	410-321-7870
Ira Kaplan	Milani Const.	X		kaplan@milaniconstruction.net	301-536-1844
James Russ	MTBMA	X		jruss@mtbma.org	301-580-0432
Butch Lundgren	MTBMA	X		blundgren@concretegeneral.com	301-948-4450
Kathrine Dixon	DPSCS		X	Katherine.dixon@maryland.gov	410-585-3035
Carmina Perez-Fowler	MSA	X		cperezfowler@mdstad.com	410-223-4129
Karen Barbour	CCF		X	karen@thebarbourgroup.com	301-343-8932
Robert Martinazzi	USM	X		robazzi@umd.edu	301-314-5924
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Barrett Tucker	ABC		X	Barrett.tucker@allanmyers.com	
Andrew Porter	ACE		X	aporter@wdcneca.org	
Rose-eva Dandridge	DGS	X		Rose-eva.dandridge@maryland.gov	410-767-4360
Gabe Gnall	BPW		X	Gabriel.gnall@maryland.gov	410-260-7720
Michael Rubenstein	DLS		X	Michael.rubenstein@mliia.state.md.us	410-946-5510
Doris Zografos	Ease Painting	X		dzografos@easecorporate.com	410-728-3273
Natalia Luis	MLuis Const.	X		natalia@mluisconstruction.com	410-545-0641
Steve Weissenberger	MCA-MD		X	weissenberger@mca-maryland.org	410-276-1926
Peter Placke	Gray & Sons Inc.		X	pplacke@graynson.com	410-771-4311
Phil Hudson			X		
Jonathan Mitz	ACE	X		jmitz@enmiselectric.com	703-335-6700
Jo Ellen Sines	MTBMA	X		jsines@cormanconstruction.com	301-343-5484

WORKGROUP SYNOPSIS:

Work Group Members (excluding units of the State):

House Bill 403, Chapter 581 of the 2016 Session of the Maryland General Assembly established a workgroup of stakeholders to develop recommendations that address issues related to State procurement for construction contracts including scope review process, termination for convenience, uniformity of change order practices & authority, prompt payment & interest, force account practice & policies, funding, contractor capacity and other issues the workgroup determines to be relevant & appropriate.

OLD BUSINESS:

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General

Item No.	Action	Topic	Item
1.1		Regulations	Legislation requires State Unit Guidelines be issued by 12/31/16 and Board of Public Work Regulations by 1/1/17
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Scope Review Process

Item No.	Action	Topic	Item
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1.3		Plan Detail	- There is a lack of detail in some drawings, many are not 100% complete - Subcontractors shop drawings are sometimes used for contract docs? Does this cause a need for change orders? - How does a contractor come to a price when there are aspects left to the imagination? -How does the State improve the level of detail on Design documents?
1.4		Bid Process	A 2 tier bid for construction was suggested, where the 3 lowest qualified bidders would move to a 2 nd round with more detailed design discussion with the design team and owner, then bid again or value engineer. The suggestion was unfavorable to both State and Contractor representatives in the room for the increase in time required and the creating of gray area on bid assessments.
1.5		Scope Review	What scope of review is being done in other parts of the State that could be incorporated into the review process? - Constructive review of docs occurs before the project is sent out to bid, in some State Units this is outsourced to a different engineering firm then designed the project, for some it is performed in house -Review of plans prior to bid advertisement creates a conflict of interest for bids provided by vendors that saw the documents in advance -Suggestion included creating a blind review by vendors, where the vendors name is not released. Contractors and the State Units agreed this created greater conflicts - Contractors do not delve deep into the specs until closer to the bid date (approx. two weeks out)
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			to have reviewed the documents, but it must still occur before the questions are due.
1.7		Question Timing	21 days minimum to advertise a bid- what is a better timeline? - should there be a delay in bid opening in order to correct issues that are obvious in the specs and drawing, and to issue addendums to clarify?
1.8		Bid Question Cut-Off	Contractors have questions after the question cutoff date, a request was made to extend the question cut-off dates. The State Units concurred that if a question is submitted after the cut-off date that is substantial, that it will be answered or the bid date will be extended, however there must be a question cut-off date. RECOMMENDATION: State Units will create language in Invitation to Bid Documents to indicate that questions can be submitted after the question cut-off date but will only be answered at the discretion of the State Unit issuing the ITB if they determine it to be in the best interest of the project.
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Termination for Convenience

Item No. Action Topic Item

1.1		No Comments	It was agreed there are no issues related to this topic and associated with Change Orders for Construction Projects

Uniformity of Change Order Practices & Authority

Item No. Action Topic Item

1.1		BPW Threshold	There is a variation in approval thresholds for State Units. The lowest threshold for Change Order approval is \$50,000 and above must go to the Board of Public Works. This adds time to process change orders and creates delays for payment for primes and sub-contractors. RECOMMENDATION: Increase the threshold for Changes Orders to the Board of Public Works to be equal for all State Units at \$1,000,000 (the current highest limit)
1.2		Processing Time	USM College Park procurement has been able to reduce <i>procurement's</i> change order processing time <i>to an average of</i> 15 days by implementing a new electronic project management system called, EBuilder software. http://www.e-builder.net/ RECOMMENDATION: USM Change order processing and software be used as a model for other State Units to expedite Change Order Processing.
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MEETING No. 2

General

Item No. Action Topic Item

2.1		Bid Review	Discussion on the review of the low bid with the low bidder and subs to allow discovery of scope issues prior to the Notice to Proceed. If issues were discovered the project would require a re-bid or a rejection of the low bidder and move to the next bidder.
2.2		Change Order Acknowledgement Timeframe	Contractors are required, per COMAR, to notify the State Unit within 20 days of a directive if there will be a change order associated with the directive. Discussion on the appropriate timeline for a State Unit response to this notification. Recommendations for 30 days were discussed, however concern arose that the State may wait 30 days because they can. 15 Days also discussed. Suggestion that if no response was provided by the State to a price proposal that this be considered acceptance. State Units firmly disagreed that lack of response cannot equal acceptance. RECOMMENDATION: It is good communication practice to respond to requests timely, if responses are not being received seek answers up the chain of command
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Prompt Payment & Interest

Item No. Action Topic Item

2.1		State	Discussion on increasing State Resources to reduce processing times for
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		Resources	changes orders. Agencies discussed how the internal bureaucratic process is the predominant cause of the long timelines, not the number of staff involved. Particularly the antiquated FMIS system (Maryland's Financial Management Information System).
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2.3		Delegation of Authority	Discussion on providing transparent information on delegation of authority, specifically for various levels of change order approval so the contractor can be assured that the person approving the change order has authority to do so. State needs to distinguish between authority to negotiate and authority to approve. RECOMMENDATION: State Units publish delegations of authority for Change Orders within the change order guidelines or include in each contract.
2.4		State Contact Information	Discussion on transparency for whom to contact within State Units when project contacts are not responsive. Or when Prime Contractors are not responsive to Sub-contractors. RECOMMENDATION: State Units provide contact information in Change Order published guidelines. Include procurement officer for bond information on the Prime, include project hierarchy for payment disputes and State Unit responsive issues.
2.5		Prime Bonds	Discussion on the bond information for the prime. Suggested forcing Primes to provide this to the Sub's in sub-contractor contracts, however the State would have to collect and review sub-contractor contracts in order to ensure. RECOMMENDATION: Provide directions in the State Unit Change Order Guidelines on how Subcontractors can contact the procurement officer to receive payment bond information on the prime if needed.
2.6		Prime Payments Public	Subcontractor would like to be able to see when the prime is paid and if that payment included their items of work. DC passed a law that requires an online system to allow subcontractor to see this information, but the details have not been worked out yet. San Antonio has a public system, but it's not broken down well making it difficult to use. State Units currently receive calls from Subcontractors to confirm Prime payment and provide information to the Subcontractors. States current FMIS (Financial Management Information System), does not have the detailed invoice breakdowns, just the total amount paid to the prime. Information cannot be extracted from this system that would answer these questions. MBE's should not encounter this issue as they are required to file monthly the amount they were paid and the Primes are required to file the amount they paid their MBE's monthly with the State reviewing and reconciling. Suggested that the State charge vendors to use an electronic application that would show the payment breakdown of the prime. The State used to charge for eMaryland Marketplace, but this was made illegal as the State cannot charge vendors to do business with Maryland. State currently does not allow electronic invoices. BPW is proposing new regulations that would allow electronic invoices. These new regulations should be in the Maryland Register in a few weeks for public comment. RECOMMENDATION: State overhaul FMIS and allow capability for subcontractors to see the breakdown of payments to primes. Until this system overhaul, make contact information available through State Unit change order guidelines for whom a subcontractor can contact to get this information.
2.7		Interest	Newly proposed BPW regulations will require a separate invoice to be submitted for the late payment interest.
2.8		Change Order	Discussion on the State carrying a change order contingency on the contract as a line item to allow faster payment for change orders. SHA previously carried

		Contingency	this line item but it was a removed as a result of legislative audits. If the line item is carried it is also included in the MBE/DBE/WBE percentages for work that is unknown and uncontracted at bid time.
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Force Account Practice & Policies

Item No. Action Topic Item

2.1		Funding Force Account	<p>Previously Force Account work did not require a change order to start. The change order was completed after the time & materials work was completed and verified. With the new law, a change order must be issued first stating the scope and that work is to proceed as force account. This change order could have \$0 since costs are unknown. Or it could have a ‘Partial Payment’. If the initial CO has no funds, there are then no funds transferred to pay invoices associated with this work. A 2nd Change Order would need to be issued to transfer the funds to the project.</p> <p>Unilateral Change Orders could be issued instead of force account and the contractor would have to issue a claim later to resolve payment discrepancies. Unilateral Change Orders were/are not preferred by the contractors.</p> <p>RECOMMENDATION: Issue “Partial Payment” with Change Orders for Force Account to allow the contractor to start billing for work as work is completed. State in the change order that this is not the full amount for the work and negotiations are on-going.</p>
2.2		Tracking Force Account	<p>Force Account Change Orders may require 2 or more change orders to transfer the full funding to the project. Some of these additional change orders may just be issued within the State for the funding</p> <p>RECOMMENDATION: If a second change order is issued, provide it with the same Change Order Number then a letter to indicate the relationship between the change orders for PAAR reports and tracking. PAAR = Procurement Agency Activity Report, this is a report from State procurement agencies to the Board of Public Works (BPW) on procurements that do not go to BPW for approval.</p>
2.3		Delay Costs	<p>Force Account work could cause delays to the overall contract and the contractor could incur additional costs for these delays.</p> <p>RECOMMENDATION: Submit delay costs as a separate Proposed Change Order from the Force Account Change Order.</p>
2.4		Dollar Limit	Discussion on reasonable dollar amounts of the force account work.
2.5		Engineers Estimate	<p>When the State and the Contractor are negotiating a change order the delta amount needs to be beneficial for both the State entities and the contractor. Since the contractor is providing their cost breakdown, should the State provide their engineers estimate for the contractor to see?</p> <p>RECOMMENDATION: After the contractor has provided a price for change order work, if the State Unit does not agree based on their engineers estimate, the engineers estimate should be provided to the contractor as part of the price negotiations.</p>

NEW BUSINESS:

General

Item No. Action Topic Item

3.1		Cross Jurisdictional Projects	When there are cross jurisdictional projects going on, the decision maker needs to be specified. For example, when local governments are doing projects with some State and some Federal Funds, decisions end up delayed for change orders due to determination of hierarchy.
3.2		Maryland Contractor	In all 3 meetings the subject of current prime and subcontractor culture was discussed. There is an unwillingness from Sub’s to contact the State and

		Culture	circumvent the Prime contractor. The belief is they could receive less work in the future from the Primes. The State has existing regulations/laws/policies that allow a sub to work with the State, but if Sub's are unwilling to take advantage of the current policies, new policies may have little to no effect on the existing culture.
3.3		CO Process	The State and Contractors would benefit from a refresher on the CO process for every job to ensure everyone understands the requirements. RECOMMENDATION: Change Order process should be discussed at pre-construction meetings
3.5	DGS	CO Law Effective Date	Does the new Change Order Law take effect for new contracts only after enacted date of 7/1/16, or does this effect all new change orders after this date. Current State construction contracts are written with clauses that all laws at the time the contract was signed are in effect. RECOMMENDATION: DGS will check with State Litigation to advise/clarify what contracts and change orders must apply the new law to practice. Checking with AG-Litigation Unit will ensure a uniform answer for all State Construction units.
3.6		Solicitation Document References	Invitation to Bid/Request for Proposal Documents for the federal government are standardized across divisions for the up front section that refers to other federal laws or guidelines. These references provide links to the actual documents or clear citations of these documents so they can be easily found. The documents are not attached as part of the solicitation. RECOMMENDATION: State should provide direct links/citations for referenced documents. This should be standard for all State Agencies.
3.7		Submittals	A good project example was provided for working with the State where the submittal process was clearly laid out at the Pre-construction meeting and the approval process was quick RECOMMENDATION: Discuss Submittal Process at the Pre-Construction Meeting, provide a clear chain of approval and clear timelines for approval.

Project Funding

Item No. Action Topic Item

3.1		Contingency Funds – DGS, USM, DPSCS	For DGS, USM, DPSCS there are contingency funds for change orders, this amount is set aside in the initial budget, but the breakdown is not shown publically. It is a percentage of the total project estimate, however this % will vary once the bids come in and the project is awarded. If the contingency on an individual project is exhausted there is a Statewide Construction Contingency Fund that can be accessed with approval from DGS & DBM. This fund is re-upped on occasion during the capital budget process and also receives funds from projects with left over funding.
3.2		Contingency Funds - SHA	SHA does not have any issues with CO funding for their projects SHA needs line items (specific) in order to provide funding (there is no contingency amount) set with the contract. SHA can reach into future fiscal years to pull funding to cover change orders.
3.3			General Allowances or Contract line items for change orders were discussed. SHA formerly provided these items, but this was eliminated as a result of Legislative Audits. The line items were not deemed to have appropriate checks and balances.

Contractor Capacity

Item No. Action Topic Item

3.1		Notification of COs to Subs	Concern raised over how Subs can know what they will be paid for in a change order. The new legislation requires that primes provide copies of the change order to the subs so the sub will know. It was suggested that the State provide this documentation to Subs, however the State does not always know which subs will be making up the change order work, this is something the Prime
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			knows.
3.2		Force Account & T&M	Contractors would rather have force account/unilateral with some funding in the CO to bill against then wait until all tickets are collected before billing can begin. Examples were provided of contractors waiting a year or more for payment on T&M/Force Account work. RECOMMENDATION: State utilize some ‘not to exceed’ language for force accounts or utilize a multi-part change order for force account/T&M change orders to allow parts of the change order to be paid as they are completed. Or utilize a Unilateral that allows for some payment and a claim later for the remainder of payment.
3.3		Procurement Processing	There is a perception that processing the paperwork to get CO payments through takes too long and that the State does not have enough personnel dedicated to this task. State Agencies concurred that it is not the number of staff, it is the process and the checks/balances for audit purposes that make the process take long.
3.4		State Staff Quality vs. Quantity	At some State Agencies there are contracted staff managing projects; Contractors perceive these staff have no incentive to manage efficiently and have less decisions making authority/make decisions slower. RECOMMENDATION: State investigate contractual PM’s look at authority levels, timelines and assessments of these contracts.
3.5		Procurement Staff	Procurement staff routinely refer contractors back to construction divisions within the State in lieu of exerting authority as a Procurement Officer. The Federal Government has a ‘Contract Officer’ that exerts authority and makes contract decisions on a job at a much faster pace. RECOMMENDATION: State look at the role of a Federal Contract Officer vs. a State Procurement Officer
3.6		Contractor Staffing	At the start of a project there are no change orders, as the job comes to an end the change orders have mounted and at times contractors attempt to include additional staff to process change orders in the cost of change orders. These costs are denied by the State.
3.7		Sub Notification	Subs pushed to be notified by the State of progress meetings. State takes no exception to Subs attending progress meetings, but requiring attendance at all meetings would create a burden on small sub’s when the project is not at a stage that requires that Sub. Requiring attendance would create the need to create a consequence if a Sub did not attend. RECOMMENDATION: Prime’s encourage Sub’s to attend progress meetings and Subs attend if available and if timing is relevant
3.8		Change Order Database	Discussion on how the State currently tracks Change Orders. SHA has a robust database system once the change order is entered into the system, they are currently working on ways to ensure CO’s are entered into the system faster. USM implemented an electronic tracking system once the change order hits procurement. DGS tracks manually by project until the Change Order is in the States Financial Management System.

Retention – State’s Retention Policies

Item No. Action Topic Item

3.1		Retainage on Completed Task	Discussion on retainage for completed work. Concerns from the State on what if the work is completed for one trade but another trade disrupts completed work, the retainages is being held on the Prime. The Prime could choose to release from certain subs. Additional concerns from the State on what leverage is available to get Contractor to complete punchlist work if there is now funding being withheld. SHA conducts a semi-final payment to bring down retainage. RECOMMENDATION: State continue current practice of releasing retainage or reducing retainage on a project by project basis. Primes bring up the issue at progress meetings and discuss reducing or releasing if it is impacting Subs.
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			RECOMMENDATION: Subs put in their contract with the Prime to reduce their retainage when their work is complete.
3.2		SHA ADA Projects	Punchlist process for SHA ADA projects is very long, as there are limited inspectors available to inspect this work and it can be a full year after construction is complete before work is inspected and retainage is released. RECOMMENDATION- SHA provide more ADA inspectors to get through punch list and substantial completion review/walk through.
3.3		O&M	Operation & Maintenance (O&M) submittals at the end of a projects end up with long review times by the Architect/Engineering Firm. Delays in approval result in delays in final payment and retainage release. RECOMMENDATION: State incentive A/E's to turn around O&M reviews faster.
3.4		CO Guidelines	RECOMMENDATION: Add to Using Agency Change Order Guidelines a section on Retainage and who to negotiate with on a project. Explain the intent of the retainage is to ensure punchlist items are completed at the end of a project.

The above reflects the author's understanding of discussions held at this meeting. Any discrepancies in these minutes should be addressed to the author within seven (7) days. If no comments are received within seven (7) days, these minutes shall stand as written.

Respectfully submitted,

STATE OF MARYLAND – DEPARTMENT OF GENERAL SERVICES

Lauren Buckler

Lauren Buckler
Assist. Secretary- Design & Construction

HOUSE BILL 403

P2

6lr1743
CF SB 826

By: **Delegates Morhaim, Branch, Bromwell, Fennell, Glenn, Kipke, Krebs, Lam, McCray, Miele, W. Miller, Oaks, B. Robinson, Szeliga, Vaughn, Walker, and West**

Introduced and read first time: January 29, 2016
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 9, 2016

CHAPTER _____

1 AN ACT concerning

2 **Construction Contracts – Change Orders**
3 **(State Procurement Change Order Fairness Act)**

4 FOR the purpose of prohibiting a unit from requiring a prime contractor, and a prime
5 contractor from requiring a subcontractor, to begin work under a contract until the
6 procurement officer for the unit issues a certain change order; providing that certain
7 acceptance letters for certain procurement contracts for construction have the same
8 force and effect as change orders for certain purposes until certain units issue
9 written change orders; providing, under certain circumstances, that nothing in a
10 certain provision of this Act prohibits a procurement officer from issuing a certain
11 order, authorizes a ~~prime contractor to refuse~~ refusal to perform certain work or
12 furnish certain labor and materials, or prejudices or impairs the right of a prime
13 contractor to submit a certain claim or dispute to a procurement officer; prohibiting
14 a change order from being required, under certain circumstances, for work to
15 continue and be completed beyond certain quantities; requiring a certain unit to
16 make a certain determination and issue a certain change order after certain work is
17 completed; requiring, under certain circumstances, a unit to pay an invoice for work
18 performed and accepted under a change order within a certain time period and in
19 accordance with a certain provision of law; requiring a prime contractor to provide,
20 within a certain time period, a subcontractor with a copy of a certain change order
21 and a certain amount to be paid to the subcontractor; requiring the Board of Public
22 Works to propose certain regulations before a certain date; requiring each unit to
23 issue certain guidelines on or before a certain date; requiring that certain guidelines

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 be updated and reissued under certain circumstances; providing that certain
 2 provisions of this Act have effect only to the extent that the provisions do not conflict
 3 with federal law or regulation; applying certain provisions of this Act to certain
 4 procurements and units of State government that are generally excluded from State
 5 procurement law; providing for the application of certain provisions of this Act;
 6 requiring the Secretary of General Services to convene a certain workgroup to
 7 develop recommendations that address certain issues; requiring the workgroup to
 8 include representatives from certain entities and to coordinate its activities with a
 9 certain commission for a certain purpose; requiring the workgroup to report its
 10 recommendations to certain committees of the General Assembly on or before a
 11 certain date; providing that a certain catchline is not law and may not be considered
 12 to have been enacted as part of this Act; providing for the effective dates of this Act;
 13 and generally relating to change orders for State procurement contracts for
 14 construction.

15 BY repealing and reenacting, without amendments,

16 Article – State Finance and Procurement
 17 Section 11–203(a) and (e)(1), (2), and (5)
 18 Annotated Code of Maryland
 19 (2015 Replacement Volume)

20 BY repealing and reenacting, with amendments,

21 Article – State Finance and Procurement
 22 Section 11–203(b)(1) and (c)
 23 Annotated Code of Maryland
 24 (2015 Replacement Volume)

25 BY adding to

26 Article – State Finance and Procurement
 27 Section 15–112
 28 Annotated Code of Maryland
 29 (2015 Replacement Volume)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

31 That the Laws of Maryland read as follows:

32 **Article – State Finance and Procurement**

33 11–203.

34 (a) Except as provided in subsection (b) of this section, this Division II does not
 35 apply to:

36 (1) procurement by:

37 (i) the Blind Industries and Services of Maryland;

1 (ii) the Maryland State Arts Council, for the support of the arts;

2 (iii) the Maryland Health and Higher Educational Facilities
3 Authority, if no State money is to be spent on a procurement contract;

4 (iv) the Maryland Industrial Training Program or the Partnership
5 for Workforce Quality Program in the Department of Economic Competitiveness and
6 Commerce, for training services or programs for new or expanding businesses or industries
7 or businesses or industries in transition;

8 (v) the Maryland Food Center Authority, to the extent the Authority
9 is exempt under Title 10, Subtitle 2 of the Economic Development Article;

10 (vi) the Maryland Public Broadcasting Commission:

11 1. for services of artists for educational and cultural
12 television productions;

13 2. when planning for or fulfilling the obligations of grants or
14 cooperative agreements that support the educational and cultural activities of the
15 Commission; or

16 3. for procurement contracts needed to implement the
17 repackaging requirements of the federal Spectrum Act;

18 (vii) public institutions of higher education, for cultural,
19 entertainment, and intercollegiate athletic procurement contracts;

20 (viii) the Maryland State Planning Council on Developmental
21 Disabilities, for services to support demonstration, pilot, and training programs;

22 (ix) the Maryland Historical Trust for:

23 1. surveying and evaluating architecturally, archeologically,
24 historically, or culturally significant properties; and

25 2. other than as to architectural services, preparing historic
26 preservation planning documents and educational material;

27 (x) the University of Maryland, for University College Overseas
28 Programs, if the University adopts regulations that:

29 1. establish policies and procedures governing procurement
30 for University College Overseas Programs; and

31 2. promote the purposes stated in § 11–201(a) of this subtitle;

1 (xi) the Department of Economic Competitiveness and Commerce, for
2 negotiating and entering into private sector cooperative marketing projects that directly
3 enhance promotion of Maryland and the tourism industry where there will be a private
4 sector contribution to the project of not less than 50% of the total cost of the project, if the
5 project is reviewed by the Attorney General and approved by the Secretary of Commerce or
6 the Secretary's designee;

7 (xii) the Rural Maryland Council;

8 (xiii) the Maryland State Lottery and Gaming Control Agency, for
9 negotiating and entering into private sector cooperative marketing projects that directly
10 enhance promotion of the Maryland State Lottery and its products, if the cooperative
11 marketing project:

12 1. provides a substantive promotional or marketing value
13 that the lottery determines acceptable in exchange for advertising or other promotional
14 activities provided by the lottery;

15 2. does not involve the advertising or other promotion of
16 alcohol or tobacco products; and

17 3. is reviewed by the Attorney General and approved by the
18 Maryland Lottery Director or the Director's designee;

19 (xiv) the Maryland Health Insurance Plan established under Title 14,
20 Subtitle 5 of the Insurance Article;

21 (xv) the Maryland Energy Administration, when negotiating or
22 entering into grants or cooperative agreements with private entities to meet federal
23 specifications or solicitation requirements related to energy conservation, energy efficiency,
24 or renewable energy projects that benefit the State;

25 (xvi) the Maryland Developmental Disabilities Administration of the
26 Department of Health and Mental Hygiene for family and individual support services, and
27 individual family care services, as those terms are defined by the Department of Health
28 and Mental Hygiene in regulation;

29 (xvii) the Department of General Services for the renovation of a
30 structure that:

31 1. was built during the 18th or 19th century; and

32 2. is listed in or eligible for listing in the National Register of
33 Historic Places; and

1 (xviii) the Department of Natural Resources, for negotiating or entering
2 into grants, agreements, or partnerships with nonprofit entities related to conservation
3 service opportunities;

4 (2) procurement by a unit from:

5 (i) another unit;

6 (ii) a political subdivision of the State;

7 (iii) an agency of a political subdivision of the State;

8 (iv) a government, including the government of another state, of the
9 United States, or of another country;

10 (v) an agency or political subdivision of a government; or

11 (vi) a bistate, multistate, bicounty, or multicounty governmental
12 agency; or

13 (3) procurement in support of enterprise activities for the purpose of:

14 (i) direct resale; or

15 (ii) remanufacture and subsequent resale.

16 (b) (1) The following provisions of this Division II apply to each procurement
17 enumerated in subsection (a) of this section:

18 (i) § 11–205 of this subtitle (“Collusion”);

19 (ii) § 10–204 of this article (“Approval for designated contracts”);

20 (iii) Title 12, Subtitle 2 of this article (“Supervision of Capital
21 Expenditures and Real Property Leases”);

22 (iv) § 13–219 of this article (“Required clauses – Nondiscrimination
23 clause”);

24 (v) § 13–221 of this article (“Disclosures to Secretary of State”);

25 (vi) Title 12, Subtitle 4 of this article (“Policies and Procedures for
26 Exempt Units”);

27 **(VII) § 15–112 OF THIS ARTICLE (“CHANGE ORDERS”);**

1 [(vii)] **(VIII)** Title 16 of this article (“Suspension and Debarment of
2 Contractors”); and

3 [(viii)] **(IX)** Title 17 of this article (“Special Provisions – State and
4 Local Subdivisions”).

5 (c) Except as provided in Title 12, Subtitle 4 and Title 14, Subtitle 3 of this article
6 **AND EXCEPT FOR § 15–112 OF THIS ARTICLE**, this Division II does not apply to the
7 Maryland Stadium Authority.

8 (e) (1) In this subsection, “University” means the University System of
9 Maryland, Morgan State University, or St. Mary’s College of Maryland.

10 (2) Except as otherwise provided in this subsection, this Division II does
11 not apply to the University System of Maryland, Morgan State University, or St. Mary’s
12 College of Maryland.

13 (5) (i) Except as provided in paragraph (7) of this subsection, the
14 following provisions of Division II of this article apply to a University:

- 15 1. § 11–205 of this subtitle (“Collusion”);
- 16 2. § 11–205.1 of this subtitle (“Falsification, concealment,
17 etc., of material facts”);
- 18 3. § 13–219 of this article (“Required clauses –
19 Nondiscrimination clause”);
- 20 4. § 13–225 of this article (“Retainage”);
- 21 5. Title 14, Subtitle 3 of this article (“Minority Business
22 Participation”);
- 23 6. Title 15, Subtitle 1 of this article (“Procurement Contract
24 Administration”);
- 25 7. § 15–226 of this article (“Policy established; timing of
26 payments; notice upon nonpayment; disputes; appeals”); and
- 27 8. Title 16 of this article (“Suspension and Debarment of
28 Contractors”).

29 (ii) If a procurement violates the provisions of this subsection or
30 policies adopted in accordance with this subsection, the procurement contract is void or
31 voidable in accordance with the provisions of § 11–204 of this subtitle.

32 **15–112. CHANGE ORDERS.**

1 (A) (1) (I) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2) OF THIS~~
2 ~~SUBSECTION~~ SUBPARAGRAPH (II) OF THIS PARAGRAPH, THIS SECTION APPLIES TO
3 STATE PROCUREMENT CONTRACTS FOR CONSTRUCTION.

4 ~~(2)~~ (II) THIS SECTION DOES NOT APPLY TO STATE PROCUREMENT
5 CONTRACTS FOR PUBLIC SCHOOL CONSTRUCTION OR PUBLIC SCHOOL CAPITAL
6 IMPROVEMENTS.

7 (2) FOR PURPOSES OF THIS SECTION, A WRITTEN ACCEPTANCE
8 LETTER FOR A STATE HIGHWAY ADMINISTRATION OR MARYLAND AVIATION
9 ADMINISTRATION PROCUREMENT CONTRACT FOR CONSTRUCTION SHALL HAVE THE
10 SAME FORCE AND EFFECT AS A CHANGE ORDER UNTIL THE STATE HIGHWAY
11 ADMINISTRATION OR MARYLAND AVIATION ADMINISTRATION ISSUES A WRITTEN
12 CHANGE ORDER.

13 (B) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (2) AND
14 (3) OF THIS SUBSECTION, A UNIT MAY NOT REQUIRE A PRIME CONTRACTOR AND A
15 PRIME CONTRACTOR MAY NOT REQUIRE A SUBCONTRACTOR TO BEGIN CHANGE
16 ORDER WORK UNDER A CONTRACT UNTIL THE PROCUREMENT OFFICER FOR THE
17 UNIT ISSUES A WRITTEN CHANGE ORDER THAT SPECIFIES WHETHER THE WORK IS
18 TO PROCEED ~~ON AN AGREED-TO PRICE, FORCE ACCOUNT, CONSTRUCTION CHANGE~~
19 ~~DIRECTIVE, OR TIME AND MATERIALS BASIS~~, IN COMPLIANCE WITH THE TERMS OF
20 THE CONTRACT, ON:

21 (I) AN AGREED-TO PRICE WHICH MAY INCLUDE A
22 PREESTABLISHED CATALOG OR UNIT PRICES BASED ON LOCAL PREVAILING WAGE
23 RATES AND EQUIPMENT AND MATERIAL COSTS FOR EACH TASK REQUIRED FOR THE
24 CHANGE ORDER AS INCLUDED IN THE BID DOCUMENTS AT THE TIME OF BID;

25 (II) A FORCE ACCOUNT;

26 (III) A CONSTRUCTION CHANGE DIRECTIVE; OR

27 (IV) A TIME AND MATERIALS BASIS.

28 (2) IF A PROCUREMENT OFFICER AND A PRIME CONTRACTOR DO NOT
29 AGREE THAT WORK IS INCLUDED WITHIN THE ORIGINAL SCOPE AND TERMS OF A
30 CONTRACT, NOTHING IN THIS SECTION:

31 (I) PROHIBITS A PROCUREMENT OFFICER FROM ISSUING AN
32 ORDER TO A PRIME CONTRACTOR TO PERFORM WORK OR TO FURNISH LABOR OR
33 MATERIALS DETERMINED BY THE PROCUREMENT OFFICER TO BE REQUIRED BY A
34 CONTRACT BETWEEN A UNIT AND THE PRIME CONTRACTOR;

1 (II) ~~AUTHORIZES A PRIME CONTRACTOR TO REFUSE~~ REFUSAL
2 TO PERFORM WORK OR TO FURNISH LABOR OR MATERIALS THAT A PROCUREMENT
3 OFFICER HAS ORDERED THE PRIME CONTRACTOR TO PERFORM OR TO FURNISH
4 BECAUSE THE PROCUREMENT OFFICER HAS DETERMINED THAT THE WORK OR
5 LABOR IS OR THE MATERIALS ARE REQUIRED BY A CONTRACT BETWEEN A UNIT AND
6 THE PRIME CONTRACTOR; OR

7 (III) PREJUDICES OR IMPAIRS THE RIGHT OF A PRIME
8 CONTRACTOR TO SUBMIT A CLAIM OR DISPUTE TO A PROCUREMENT OFFICER, IN
9 ACCORDANCE WITH APPLICABLE LAW AND THE CONTRACT, SEEKING ADDITIONAL
10 COMPENSATION FOR COMPLYING WITH AN ORDER OF THE PROCUREMENT OFFICER
11 TO PERFORM WORK OR TO FURNISH LABOR OR MATERIALS DETERMINED BY THE
12 PROCUREMENT OFFICER TO BE REQUIRED BY A CONTRACT BETWEEN THE PRIME
13 CONTRACTOR AND A UNIT.

14 (3) (I) IF A UNIT IS TO PAY FOR A CONTRACT OR A PART OF A
15 CONTRACT USING A UNIT PRICE METHODOLOGY, A CHANGE ORDER MAY NOT BE
16 REQUIRED FOR WORK TO CONTINUE AND BE COMPLETED BEYOND THE ESTIMATED
17 QUANTITIES IN THE CONTRACT.

18 (II) AFTER WORK IS COMPLETED, A UNIT SHALL:

19 1. DETERMINE THE ACTUAL QUANTITY USED TO
20 COMPLETE THE CONTRACT; AND

21 2. IF NECESSARY, ISSUE A FINAL ADJUSTMENT CHANGE
22 ORDER TO THE CONTRACTOR.

23 (C) IF THE AMOUNT TO BE PAID UNDER AN APPROVED CHANGE ORDER DOES
24 NOT EXCEED \$50,000, A UNIT SHALL PAY AN INVOICE FOR WORK PERFORMED AND
25 ACCEPTED UNDER THE CHANGE ORDER AS PROVIDED FOR IN THE CONTRACT
26 WITHIN 30 DAYS AFTER THE UNIT RECEIVES THE INVOICE AND IN ACCORDANCE
27 WITH § 15-103 OF THIS SUBTITLE.

28 (D) WITHIN 5 DAYS AFTER RECEIPT OF A WRITTEN CHANGE ORDER, A PRIME
29 CONTRACTOR SHALL PROVIDE A SUBCONTRACTOR WITH A COPY OF THE APPROVED
30 CHANGE ORDER AND THE AMOUNT TO BE PAID TO THE SUBCONTRACTOR BASED ON
31 THE PORTION OF THE CHANGE ORDER WORK TO BE COMPLETED BY THE
32 SUBCONTRACTOR.

33 (E) BEFORE JANUARY 1, 2017, THE BOARD SHALL PROPOSE REGULATIONS
34 THAT PROVIDE FOR AN EXPEDITED CHANGE ORDER PROCESS FOR CHANGE ORDERS
35 VALUED AT MORE THAN \$50,000.

1 **(F) (1) ON OR BEFORE DECEMBER 31, 2016, EACH UNIT SHALL ISSUE**
2 **GUIDELINES FOR THE UNIT'S CHANGE ORDER PROCESS.**

3 **(2) THE GUIDELINES ISSUED UNDER PARAGRAPH (1) OF THIS**
4 **SUBSECTION SHALL BE UPDATED AND REISSUED WHEN ANY CHANGES ARE MADE TO**
5 **THE UNIT'S CHANGE ORDER PROCESS.**

6 **(G) A PROVISION OF THIS SECTION HAS EFFECT ONLY TO THE EXTENT THAT**
7 **THE PROVISION DOES NOT CONFLICT WITH FEDERAL LAW OR REGULATION.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That:

9 (a) The Secretary of General Services shall convene a workgroup of stakeholders
10 to develop recommendations that address the following issues related to State procurement
11 for construction contracts:

12 (1) scope review process;

13 (2) termination for convenience;

14 (3) uniformity of change order practices and authority;

15 (4) prompt payment and interest;

16 (5) force account practice and policies;

17 (6) funding;

18 (7) contractor capacity; and

19 (8) any other issues that the workgroup determines to be relevant and
20 appropriate to address.

21 (b) The workgroup shall include representatives from:

22 (1) the Maryland Chapter of the Associated General Contractors of
23 America;

24 (2) the Associated Builders and Contractors ~~of Metro Washington;~~

25 (3) the Alliance for Construction Excellence;

26 (4) the Coalition for Contracting Fairness;

27 (5) the Maryland Washington Minority Contractors Association; and

1 (6) any units of the State the Secretary of General Services deems
2 appropriate.

3 (c) The workgroup shall coordinate its activities with the One Maryland Blue
4 Ribbon Commission on Procurement to ensure consistency and avoid unnecessary
5 duplication in the recommendations reported under subsection (d) of this section.

6 (d) On or before December 31, 2016, the workgroup shall report its policy,
7 regulatory, and legislative recommendations to the Senate Education, Health, and
8 Environmental Affairs Committee and the House Health and Government Operations
9 Committee in accordance with § 2-1246 of the State Government Article.

10 SECTION 3. AND BE IT FURTHER ENACTED, That the catchline contained in
11 this Act is not law and may not be considered to have been enacted as part of this Act.

12 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
13 effect July 1, 2016.

14 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section
15 4 of this Act, this Act shall take effect June 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.