



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

June 4, 2019

The Honorable Larry Hogan
Governor

The Honorable Nancy Kopp
Treasurer

The Honorable Peter Franchot
Comptroller

Re: June 5, 2019 BPW Meeting – I495/I270 P3 Program

Members of the Board of Public Works,

We write today as leaders of the Appropriations Committee and Transportation Subcommittee. This Committee was authorized by 2013 bill HB 560 as one of the key committees charged with oversight of Maryland's Public-Private Partnerships. In that capacity, we are writing to share several concerns about item 19-GM on tomorrow's BPW agenda, titled "I-495 & I-270 P3 Program (Program)."

We are writing to ensure you are aware of the concerns and recommendations of the General Assembly and Department of Legislative Services (DLS) regarding the pre-solicitation report. Specifically, we recommend that BPW consider postponing certification of the proposed P3 until after completing an Environmental Impact Study (EIS) and that any decision of the BPW on this issue require a unanimous vote. This request reflects recommendations made by DLS and captured in FY20 budget language approved unanimously by the General Assembly.

Per the 2013 P3 statute, on January 7, 2019 the Department of Legislative Services produced a report for our committee concerning the pre-solicitation report for MDOT's Traffic Relief Plan. DLS flagged two serious issues:

1. "The first issue is the lack of specificity for what will actually be procured... there are 15 alternatives being considered for the corridor...the complexity and capital cost of the construction of 2 lanes in each direction on both roadways would be considerably higher than the construction

of a single lane in each direction on I-495 and conversion of the HOV lanes on I-270. This difference could lead to different conclusions on the costs and benefits of using a P3 procurement.”

Maryland law requires that a pre-solicitation report include a reasonable estimate of the cost of a P3. MDOT did include an estimate of \$9-\$11 billion in the Pre-Solicitation Report, but in a later supplement, noted that the original estimate was “likely too low.” As DLS notes, this issue is further complicated by the fact that it remains unclear what specifically the solicitation will be for – the original law contemplated a pre-solicitation report for one project, not 15 alternatives.

2. “The second issue with the pre-solicitation report is the lack of rigorous effort to evaluate the possibility of MDTA constructing any toll lane chosen as the preferred alternative. The purpose of a pre-solicitation report is to justify the use of a P3 in lieu of a traditional procurement. Without a good understanding of how a conventional procurement would work for a particular project, it is impossible to adequately evaluate if a P3 procurement would be better.”

This concern underscores a fundamental issue with MDOT’s current justification for this P3: that the state lacks sufficient funds. Lack of funds is not an acceptable strategic reason to pursue a P3 and is contrary to the intent of the legislation passed several years ago. Further, using this excuse undermines our collaborative budget process – each year we work with our partners in the Administration on the funding priorities for Maryland.

DLS recommended that MDOT withdraw the pre-solicitation report until after the completion of a draft Environmental Impact Study, which would provide more clarity on what alternative was actually selected to progress. The General Assembly codified this recommendation in its conference committee report, ultimately approved unanimously by both Chambers. Additionally, we recommended that any decision of the Board of Public works to certify a P3 be a unanimous vote.

We write today because we are concerned that MDOT has not fully complied with its obligations to inform the budget committees of the details of its pre-solicitation report pursuant to the 2013 legislation. According to the P3 law, a pre-solicitation report needs to be submitted to members of the BPW and chairs of three committees - Senate Budget and Taxation, House Ways and Means and House Appropriations Committees, after which there is a 30-day review period, with a 15-day optional extension. MDOT delivered its original pre-solicitation report according to the law on Dec 11, 2018. However, the pre-solicitation report supplement, dated April 12, and which contained significant changes, *was never sent to us*. As this supplement is part of the package being proposed to the BPW and contains significant details not included in the original pre-solicitation report, it should have been shared with the Budget Committees and DLS for review according to the law prior to consideration by the BPW.

We hope that you will consider these concerns in your review of the proposed P3 at your upcoming meeting.

Sincerely,

Maggie McIntosh
Chair, Appropriations Committee

Tawanna Gaines
Vice Chair, Appropriations Committee
Chair, Transportation & Enviro. Subcommittee

Brooke Lierman
Vice Chair, Transportation & Enviro. Subcommittee