



Maryland Procurement ALERT || Special Edition

Maryland procurement laws are up to Key Bridge challenge

The Maryland Procurement ALERT is now featured in [The Daily Record](#). This [article](#) ran on April 2, 2024. It is archived [here](#).

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Our region woke to a shock on the morning of March 26, 2024, with the news that the Francis Scott Key Bridge over Baltimore's Patapsco River came tumbling down after being struck by a freighter. While first thoughts naturally went to the eight individuals who were on the bridge at the time and the families of the six whose lives were lost, concern has turned to the businesses and workers on the vast portion of the Baltimore Harbor that has been choked off from the shipping world by the bridge collapse.

Resolving these issues and getting the Port of Baltimore operating is a paramount concern that will require considerable public funds and government contracts.

Efforts to ensure rapid reopening of the harbor and discussions concerning reconstruction of the bridge began almost immediately. On the day of the accident, the president of the United States took to the airwaves and pledged that the federal government would fund the rebuild. Days later, the Moore administration applied to the federal government for emergency funds, and within hours the federal government made \$60 million available for "mobilization, operations, and debris removal, laying the foundation for a rapid recovery."

These swift efforts were a good start to restoring the Port to operation as quickly as possible, and the Biden and Moore administrations deserve a lot of credit.

The work, however, is just beginning, and there will be a tremendous amount of goods and services that the state must procure in a short period of time. The question arises as

to whether Maryland's procurement laws and regulations are up for the task. The recent COVID-19 pandemic has shown us that, by and large, they are.

The procurement for a new bridge is likely to be conducted by the Maryland Transportation Authority. MdTA has authority for toll roads, like the Key Bridge.

MdTA will likely solicit the project pursuant to the design/build method of source selection, as was done for the Nice/Middleton Bridge in Southern Maryland in 2020. This allows for a single contractor to design and build the project with the benefit of clearly placing responsibility on one entity for the finished project. And it is possible that the request for proposals will set a "no-excuse deadline" for timely completion of the project.

All of this may be done under Maryland's laws and regulations for emergency procurements.

Maryland statutes provide for emergency and expedited procurements when needed to "avoid or mitigate serious damage to public health, safety, or welfare." The Code of Maryland Regulations allows for "emergency method of source selection" under circumstances "when an emergency arises and the agency's resulting need cannot be met through normal procurement methods."

The collapse of the Key Bridge would seem to fit with these provisions.

These regulations allow that "required items" may be "procured in time to meet the emergency," but they instruct that "such competition as is possible and practicable shall be obtained" The regulations provide safeguards by requiring the procuring authority to make a record of the circumstances and justification for the emergency contract within seven days of award and to publish notice of award no more than 30 days after execution and approval of the contract.

MdTA has a bit of additional leeway in procurement of capital expenditures for toll facilities, including bridge construction. Such projects are generally outside the jurisdiction of the Board of Public Works because funding comes from toll revenues. This will allow MdTA to expedite to a degree contract approvals, but MdTA will still need to comply with the basic equitable provisions of the procurement laws and regulations.

There are good reasons for procurement procedures to be adjusted to address emergency conditions but remain in place. The guiding principle of procurement laws and regulations is that maximum competition yields the best value for the state. Maryland's laws and regulations are in place to ensure fair competition that will quickly and efficiently restore the operations of the Port and transportation of traffic over the Patapsco.

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