



Maryland

# Board of Public Works

Public Comments For February 12, 2025 Meeting

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February 5, 2025

The Honorable Wes Moore  
State House  
100 State Circle  
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The Honorable Brooke Lierman  
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The Honorable Derek Davis  
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### **Approving DGS Item 11-IT (2/12/25) is risky for the State. Postponing approval for complete review is not.**

**(1) The Board should not approve the award of this contract in the face of the many unresolved protests and protest appeals.**

- If a protest or appeal has been filed, the Board may approve award of the contract only if the Board “finds that execution of the contract without delay is necessary to protect substantial State interests,” COMAR 21.10.02.11A(1).
- DGS’s statement, that “without the award of this contract, the State would be unable to deliver a range of essential services,” is simply untrue. The services are being delivered now and will continue to be delivered through the existing contract vehicles that currently undergird those essential services.

- The sheer number of protests leads to the conclusion that this is an extraordinary Agenda Item; seasoned Board observers find it unique. Nineteen protests were received; five are pending, two are sustained, and at least two are under appeal to the MSBCA. The protests raise concerns about flaws in the evaluation process; failure to follow RFP criteria; and discrepancies in the award process. Several protestors allege unclear evaluation standards, particularly regarding undefined terms like "best value" and improper consideration of partnerships or experience. Additionally, protestors argue that the lack of opportunity for oral discussions prevented them from clarifying misunderstandings or addressing minor issues. To approve DGS's Item is to rely solely on DGS's assurances that it has reviewed its own actions and is satisfied.
- Please note that the Procurement Officer states in the denial of Attain's protest that, due to a *page limitation*, "DGS could not comprehensively evaluate Attain's staffers." PO Decision at 5 (1/29/25). This for a half-a-billion dollar ten-year exclusive contract
- DGS belies its own position when it acknowledges that no work orders can issue under the proposed awards until Federal approval is obtained. The current grave uncertainty concerning "preapproval for any contracts receiving Federal Financial Participation" should convince the Board that a rush to award new contracts is fraught with unknowns.

**(2) The enormous decision DGS asks the Board to make here requires certainty and not conjecture.**

- DGS seeks authority to award **ten-year** contracts to 14 contractors (FA 1) some portion of the overall **\$445 million** the State anticipates spending on Agile Resources and Teams during the lengthy contract term. Essential State services such as SNAP, TCA, and MDTHINK will fall under this procurement umbrella that will not be subject to further Board review for a decade.
- Not only will all State agencies use these contracts for the next decade but local governments and nonprofits will access these services relying on the State's contracting vehicle.
- DGS describes a method of awarding work orders under these master contracts that is both inappropriate for information technology contracting and not designed to achieve the best value for the State: "The State will rotate work assignments among the awarded contractors by issuing work order requests in the order of highest to lowest overall ranked Contractor. This sequence will repeat as necessary throughout the life the Contract." Instead of competing among

master contractors for specific projects, the using agency will simply “go to the next on the list” even if the next on the list is the lowest ranked Contractor.

- The magnitude of the decision DGS requests – long-term (one decade) exclusive commitment – and the breadth of the consequences – State agencies, local governments, nonprofits all relying on these contract vehicles – overwhelms DGS’s cavalier assurances to trust that “all is well” with this procurement.

(3) **The procurement evaluation process was fatally flawed.**

- DGS did not follow the evaluation process it laid out in the Request for Proposals. DGS is wrong when it states in Item 11-IT “that the evaluations were conducted in strict adherence to the RFP requirements and that all proposals were assessed based on the established RFP criteria.” DGS never contacted or checked any references for offerors’ past experiences with similar projects.

The RFP states:

*“The following experience is preferred **and will be evaluated** as part of the Technical Proposal (see the Offeror experience, capability and references evaluation factor). RFP, Section 3.10.1.*

*“The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria.” RFP, Section 5.3.2G.*

*“At least three (3) references are requested from customers who are capable of documenting the Offeror’s ability to provide the goods and services specified in this RFP.” Section 5.3.2H.*

After requiring references in order to determine “Offeror experience, capability,” DGS then ignored its own edict and did not do any external or third-party validation of offeror qualifications as the RFP required.

- A procurement officer must follow the procedures set forth in an RFP. Failure to follow RFP procedures is fatal. “When evaluating proposals, the Procurement Officer must follow COMAR and the language of the RFP . . . . Unexpressed criteria may not be considered in evaluating a proposal, *nor may specific requirements or criteria in an RFP be ignored by the evaluating agency.*” *In re Gantech*, MSBCA Nos. 3021/3023 (2012) at 12 (emphasis added); *see also In re The Active Network*, MSBCA No. 2781 (2012) at 44 (“To summarize the fatal flaws committed by DHR in this procurement, neither of the top two technical evaluation factors was fairly and accurately evaluated.”).

- DGS did not allow for oral presentations or discussions. To base an exclusive ten-year, half a billion-dollar award on the basis of paper only is patently unreasonable. Please note that the Administration’s **Procurement Reform Act of 2025 HB500/SB426** if enacted would make the State Procurement Law explicit: *“An oral presentation is required for . . . information and technology services expected to exceed \$5 million.”* (Proposed amendment to section 13-104.)
  
- On the face of the BPW Item, DGS scoring of overall combined score is patently illogical. For example, in FA1, awards are recommended to Overall Ranking #13 and #14. These vendors were technically ranked equal; however, their substantial price difference should have been reflected in the overall rankings. Instead, with price factored in, they remain tied. For the Board to approve this procurement, it should be assured that DGS has a detailed record, explaining how it ranked offers and how price and technical rankings were combined to create the overall rankings.

**In Sum:**

- We agree with DGS that it is paramount to “ensure the uninterrupted delivery of these essential services that millions of Maryland residents rely on.”
  
- Approving DGS Item 11-IT (2/12/25), however, does not achieve that goal.

Respectfully submitted,



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## 2/12 BPW Agenda Item 11-IT - Notification of Filing of Appeal with MSBCA

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Thu, Feb 6, 2025 at 3:42 PM

Manny, Joanna and Jasmine – On behalf of my client, FEI Systems, I wanted to provide notice to you that FEI timely filed an appeal with the Maryland State Board of Contract Appeals this afternoon challenging the Department of General Services' evaluation and decision not to select FEI for an award under RFP No. BPM043644. As you know, this contract is on the BPW Agenda (Item 11-IT) for discussion on February 12<sup>th</sup>.

Should you have any questions, please do not hesitate to contact me.

Best regards,

TEB

**Tim E. Braue**

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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 12, 2025

Dear Honorable Board of Public Works Members,

We are writing to respectfully request that the Board defer the award of Contract ID BPM043644 (Statewide Agile Resources and Teams 2024) scheduled for the February 12th Board of Public Works meeting until all pending bid protests and appeals are resolved.

The integrity of Maryland's procurement process is at stake. Currently, there are five unresolved protests and an active appeal before the Maryland State Board of Contract Appeals. These protests raise serious concerns about the evaluation process, including inconsistencies in applying RFP criteria and lack of transparency in the evaluation standards.

While DGS cites operational urgency to proceed with the award, bypassing the protest process would set a concerning precedent that undermines the fundamental fairness of state procurements. COMAR provides a protest process specifically to ensure fair competition and maintain vendor confidence in Maryland's procurement system.

We respectfully urge the Board to allow the protest process to run its course and address outstanding questions before considering this \$445 million award. This would demonstrate Maryland's commitment to procurement integrity and due process.

Thank you for your consideration of this matter.  
Sincerely,

A handwritten signature in black ink, appearing to read "Steve Hershey".

Senator Steve Hershey  
Minority Leader

A handwritten signature in black ink, appearing to read "Katie Fry Hester".

Senator Katie Fry Hester  
Chair, Joint Committee on Cybersecurity,  
Information Technology and Biotechnology

**Name:** Nikhil N

**Agenda:** Department of General Services

**Item:** 11-IT

**Position:** Oppose

**Comment:**

- 1) Same company was awarded 2 contracts (same ownership)
- 2) Many current companies supporting work in Maryland are eliminated in the award.
- 3) Company registered a month before RFP submission to do business in Maryland was awarded a contract.
- 4) Very low % of Maryland companies in FA2
- 5) Very low % of Small and Minority Business

All the above shows that there were significant flaws in the evaluation process. Pls reevaluate and reconsider this RFP.