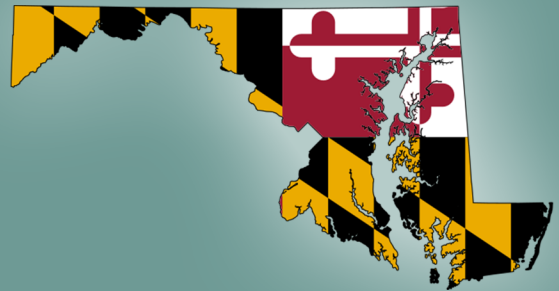


STATE OF MARYLAND

Board of Public Works

GOVERNOR • TREASURER • COMPTROLLER

PROCUREMENT ADVISOR'S REPORT



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Fiscal Year 2013

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I. SCOPE OF THE REPORT

This is the Fiscal Year 2013 State Procurement Report to the Board of Public Works and the General Assembly, which, as required by State law, includes:

- (1) “Information on actions necessary to improve effective broad-based competition in procurement”;¹ and
- (2) The Procurement Advisor’s “findings and recommendations for improvements to the procurement system” to effect broad-based competition.²

II. MAGNITUDE OF STATE PROCUREMENT IN FISCAL YEAR 2013

In fiscal year 2013, the State procured over \$5.4 billion in goods and services which is a 28.3% decrease from FY 2012.³ The \$2.4 billion pharmacy benefits contract for State employees awarded in FY 2012 accounts for the difference. The State total does *not* include procurements by the University System of Maryland, Morgan State University, or St. Mary’s College of Maryland.

During that same period, the Board of Public Works approved \$4.7 billion in contract awards and contract modifications⁴. The Board-approved total *does* include University contracts, so the two numbers are not directly comparable.

	Submitted	Approved	Disapproved/ Deferred	Total Dollars (billions)
Contracts	578	559	19	\$2.3
Modifications	357	355	2	\$2.4

Both totals represent contract award amounts, which is the maximum amount that may be spent during the contract term

¹ State Finance and Procurement Article, § 12-101(b)(7), Annotated Code of Maryland. Unless otherwise noted, all statutory references in these notes will be to the State Finance and Procurement Article, Annotated Code of Maryland.

² §12-102(a)(2)(x).

³ The FY 2012 contract award total was \$7,577,051,985. Source: Statewide and MDOT Advanced Purchase Inventory Control System (ADPICS). See Appendix for detailed numbers.

⁴ FY 2015 Managing For Results, Board of Public Works. See FY 2015 Proposed Operating Budget for complete MFR data. <http://www.dbm.maryland.gov/agencies/operbudget/Documents/2015/Proposed/execadmin.pdf>

III. STATE PROCUREMENT GOALS

The General Assembly has articulated the State Procurement Law's manifold purposes:⁵

- A. Provide for increased confidence in State procurement.
- B. Ensure fair and equitable treatment of all persons who deal with the procurement system.
- C. Provide safeguards for maintaining a procurement system of quality and integrity.
- D. Foster effective broad-based competition through support of the free enterprise system.
- E. Promote increased long-term economic efficiency and responsibility by encouraging the use of recycled materials.
- F. Provide increased economy in the State Procurement system.
- G. Simplify, clarify and modernize the State Procurement Law.
- H. Continue to develop procurement regulations, policies, and practices.
- I. Promote the development of uniform procurement procedures to the extent possible.

IV. OVERVIEW OF STATE PROCUREMENT ORGANIZATION

Board of Public Works: The Board of Public Works comprises the Governor, Treasurer, and Comptroller. The Board controls procurement by various State agencies (including direct review and approval of most State contracts exceeding \$200,000); adopts regulations (COMAR Title 21); sets procurement policy; and establishes internal operating procedures. Board operations are directed by the Executive Secretary⁶ with the Board's Procurement Advisor and General Counsel serving statutorily delineated duties.⁷

NOTE CONCERNING PROCUREMENT LAW EXEMPTIONS: The State Procurement Law exempts from its reach more than 30 agencies, programs, or transaction types. Additionally, agency and program enabling statutes often contain special sections that exempt the agency or program "from Division II of the State Finance and Procurement Law."⁸ While an exemption generally excludes the procurement from Board of Public Works review, an exemption also means exclusion from standardized State procedures such as: competitive procurement methods, green purchasing requirements, public notice of solicitations and awards, and purchasing from Maryland Correctional Enterprises, Blind Industries, and Employment Works providers.⁹ Exemption also means further decentralization of the State's procurement process.¹⁰ A complete

⁵ §11-201(a).

⁶ §10-201.

⁷ §12-102. The General Assembly created the Procurement Advisor and the General Counsel positions in 1994 as a result of a Joint Task Force on Maryland's Procurement Law. Chapter 750 (1994 Laws of Maryland).

⁸ For example, the Maryland Health Benefit Exchange is exempt under the Insurance Article, §31-103.

⁹ §11-203. Most exempt agencies are required to follow MBE laws and a few other general requirements.

¹⁰ The 1994 Joint Task Force on Maryland's Procurement Law recommended the Legislature discontinue granting additional exemptions until they reviewed existing exemptions. *Report of Joint Task Force on Maryland's Procurement Law* at p. 26.

exemption from State procurement law is distinguished from exceptions simply from Board of Public Works review, *e.g.*, the exception for procurements to construct roads, bridges, or highways. Those procurements are subject to Division II of the State Finance and Procurement Law but are excepted from Board of Public Works jurisdiction.¹¹

NOTE CONCERNING GENERAL-OBLIGATION BOND-FUNDED CONTRACTS: Every contract funded with general-obligation bond proceeds – regardless of type of procurement, procurement exemption, or whether it is a procurement contract – must be approved by the Board before the contract is signed.¹²

Procurement Advisory Council: The Procurement Advisory Council (PAC), chaired by the Board’s Executive Secretary, comprises the Secretaries of General Services, Transportation, and Budget and Management; the State Treasurer; the Special Secretary of the Office of Minority Affairs; a representative of local government; and two members of the public with expertise in State procurement.¹³ The PAC is charged with ensuring the State procurement system is using the most advanced procurement methods and management techniques; enhancing communication among State agencies on procurement methods; providing a forum for discussion of specific procurement issues; and making recommendations to the Board for improving the procurement process.¹⁴

Primary Procurement Units: Seven primary procurement units, subject to the authority of the Board of Public Works, have jurisdiction over State procurement as follows:¹⁵

State Treasurer may engage in or control procurement of:

- Banking
- Financial services
- Insurance
- Insurance services

Department of Budget and Management may control procurement of:

- Services
- Leases of motor vehicles

Department of General Services may engage in or control procurement of:

- Real property leases
- Commodities and supplies
- Construction and construction-related services
- Architect and engineering services

¹¹ §12-202.

¹² §8-301. This is a provision of the State Finance Law (Division I of State Finance and Procurement Article) as distinct from a requirement of the State Procurement Law (Division II of that Article).

¹³ §12-105.

¹⁴ §12-105(g).

¹⁵ §12-107.

Department of Transportation and Maryland Transportation Authority may engage in procurement of:

- Transportation-related construction and construction services
- Transportation-related architect and engineering services
- Rolling stock and other property peculiar to a transit system
- Supplies and services for aeronautics-related activities

Maryland Port Commission may engage in procurement of:

- Supplies and services for Port-related activities
- Construction and construction-related services for a Port facility
- Port-related architect and engineering services
- Leases of real property for Port-related activities unless lease payments are from the General Fund

Department of Public Safety and Correctional Services may engage in procurement of:

- Construction and construction-related services for State correctional facilities
- Supplies, materials, and equipment to support construction and construction-related services for State correctional facilities

Department of Information Technology may control procurement of:

- Information processing equipment and associated services
- Telecommunications equipment, systems, or services

Procurement Delegations: As stated, the seven primary procurement units may exercise procurement authority “subject to the authority of the Board.” The Board has determined to delegate some of its authority to approve contract awards to those primary procurement units; in turn those units have re-delegated to procurement agencies some of their authority to approve contract awards. These delegations and re-delegations are summarized:

Department of General Services

- All commodities and supplies contracts
- Capital construction, equipment and equipment leases, architect and engineering, and maintenance contracts (including options) valued at \$200,000 or less
- Sole source, and single bid contracts, and contract modifications valued at \$50,000 or less

In turn, DGS re-delegates authority to procurement agencies:

- Commodities contracts less than \$25,000
- Facility maintenance contracts less than \$50,000

Department of Budget and Management

- Service contracts and contract options valued at \$200,000 or less
- Sole source valued at \$100,000 or less
- Single bids and contracts modifications valued at \$50,000 or less

In turn, DBM re-delegates authority to procurement agencies:

- \$100,000 to the Departments of Information Technology, General Services, Transportation, Human Resources, and Health & Mental Hygiene for services
- \$200,000 to all agencies for service contracts with preferred providers¹⁶
- \$100,000 to the State Police for helicopter maintenance
- \$50,000 to the Department of Natural Resources and the Department of Education's Division of Rehabilitation Services for conversion of vehicles and homes
- \$25,000 in any matter not listed except no delegation with respect to vehicle leases

Department of Information Technology

- Information technology contracts and contract options valued at \$200,000 or less
- Sole source contracts valued at \$100,000 or less
- Single bid contracts and contract modifications valued at \$50,000 or less
- Software license renewals

In turn, DoIT re-delegates authority to procurement agencies:

- Information technology contracts (not telecommunications) valued at \$25,000 or less

Department of Transportation

- Maintenance, equipment and equipment leases, architect and engineering, transportation-related construction, and capital-construction contracts (including options) valued at \$200,000 or less
- Capital equipment, sole source, and single bid contracts, and contract modifications valued at \$50,000 or less
- Supplies and services for aeronautics-related activities

Treasurer

- All banking, investment, and financial-related services contracts
- All insurance and insurance-related services contracts

Maryland Port Commission

- Port facilities construction and construction-related services contracts, equipment and equipment leases, and Port-related architect/engineering services and maintenance contracts (including options) valued at \$200,000 or less
- Port Administration commodities and supplies contracts
- Port Administration services and information technology contracts valued at \$200,000 or less

¹⁶ See Section V. *infra* for discussion of preferred providers.

- Capital equipment, sole source, and single bid contracts, and contract modifications valued at \$50,000 or less
- Modifications to stevedoring and terminal services contracts that do not exceed the contract amount by 20 percent.

Department of Public Safety and Correctional Services

With respect only to construction and construction-related services at State correctional facilities:

- Capital contracts valued at \$200,000 or less
- Architect/engineering contracts (based upon DGS selection process) valued at \$200,000 or less
- All commodities and supplies contracts
- Capital equipment, sole source, and single bid contracts, and contract modifications valued at \$50,000 or less

V. PROCUREMENT METHODS

Agencies that must follow the State Procurement Law may obtain goods and services through the following procurement methods.

Competitive Sealed Bidding. Agencies must use competitive sealed bidding unless another method is specifically authorized. Under this method, award is made to the responsible bidder who submits a responsive bid that offers the lowest bid price or lowest evaluated bid price.¹⁷

Competitive Sealed Proposals. Award is made to the responsible offeror who submits the proposal determined to be most advantageous to the State considering the evaluation factors set forth in the request for proposals.¹⁸ Offerors are judged based on technical and price proposals.

Negotiated Award After Unsatisfactory Competitive Sealed Bidding. If a competitive-sealed-bid procurement produces bids that are rejected, exceed funds available, or are unreasonable as to one or more requirements, the agency may request revised bids from the same bidders. Award is made based on the most favorable bid price or most favorable evaluated bid price of the revised bids.¹⁹

Sole Source. The sole source procurement method may be used if only one source for the goods or services is available.²⁰

¹⁷ §13-103; The award may be made to the bid most favorable to the State for certain revenue-producing contracts under §11-202(3).

¹⁸ §13-105

¹⁹ COMAR 21.05.04.01

²⁰ §13-107

Emergency. Award may be made by any method that the procurement officer determines appropriate to avoid or mitigate serious damage to public health, safety, or welfare.²¹ Emergency awards are within a procurement agency’s authority: it may award a contract limited to the quantity and types of items necessary to avoid or mitigate damage without Board of Public Works approval. After award, the agency reports the procurement to the Board.

Expedited. The Maryland Aviation Administration and the Maryland Port Commission may award a contract on an expedited basis, which means that certain standard Procurement Law requirements (primarily, public notice and formal competition requirements) do not have to be followed. The expedited award must be based on as much competition as reasonably possible if: urgent circumstances exist, an expedited procurement would serve the public interest, and the need for an expedited procurement outweighs the benefits of using the standard methods. MAA and the Port must seek Board of Public Works approval before soliciting an expedited procurement.

Small Procurement. Minimum procurement requirements are in place for agencies to award contracts \$25,000 or less (or \$50,000 or less for DGS construction contracts).

Auction bids. Primary procurement units may use an auction (rather than sealed bids) to award contracts for supplies estimated at \$1 million or more. Like the sealed-bid method, when the auction is complete, award is made based on lowest bid price or lowest evaluated bid price.²² DGS uses this method to purchase electricity.

Intergovernmental Cooperative Purchasing. In basic terms, cooperative purchasing is sharing a contract among government entities. An agency may act as a lead agency and award the contract that authorizes other government entities to use it, or an agency may simply “piggyback” off an existing contract. Nonprofits also have the authority to piggyback off government cooperative purchasing agreements.²³

Architect and Engineering Services. When a primary procurement unit solicits offers for architectural or engineering services, it evaluates the offeror’s technical proposal only. After determining the most qualified offeror, award is made to that offeror if the agency and the offeror are able to negotiate a price that is fair, competitive, and reasonable.²⁴

Noncompetitive Negotiated Procurement. This procurement method is restricted to certain human, social, or educational services. Award is made based on “the best interests of the State.”²⁵

²¹ §13-108

²² §13-111

²³ Chapter 677, Laws of 2009

²⁴ State Finance and Procurement Article, Title 13, Subtitle 3.

²⁵ §13-106

The Board of Public Works approved in FY 2013 awards²⁶ based on the various methods as shown:

Competitive Sealed Bid	Competitive Sealed Proposals	Single Bid/Proposal	Sole Source	Emergency/ Expedited	Other
216	128	67	59	57	73

Although sole source totals have declined, contracts resulting from single bids/proposals are on the rise.²⁷ Board staff is working with the Procurement Advisory Council to ensure agencies are using procurement best practices to maximize procurement competition.

VI. PURCHASING CARDS

Authorized State personnel may use the State of Maryland purchasing card to pay for purchases of \$5,000 or less. The State receives a rebate from the bank that provides the cards. When using the purchasing card, procurement agencies are governed by the small procurement regulations.

In the FY 2013 reporting period:

- Payments made with State purchasing cards totaled \$259,837,975.
- The average purchase made with a purchasing card was \$353.
- The State received annual rebates totaling \$4,054,346.

VII. SOCIOECONOMIC PROGRAMS

The General Assembly has adopted various programs to ensure that all persons have access to meaningful opportunities to contract with the State and to ensure that State dollars are spent in a manner that furthers common goals. State Procurement goals include advancing participation by minority business enterprises, small businesses, veteran-owned businesses, and preferred providers in State contracts and the use of environmentally-sound practices.

Preferred Providers

The General Assembly has set a clear mandate that State agencies “shall buy supplies and services” from certain entities if those entities provide what the agencies are looking to procure.²⁸ These entities are referred to as preferred providers.

²⁶ FY 2015 Managing For Results, Board of Public Works. See FY 2015 Proposed Operating Budget for complete MFR data. www.dbm.maryland.gov/agencies/operbudget/Documents/2015/Proposed/execadmin.pdf

²⁷ The Board approved 50 contracts awarded by a single bid/proposal in FY 2012. Total source contracts approved by the Board in FY 2012 was 75.

²⁸ See generally §§ 14-101 – 14-109

The Preferred Providers are, in order of preference:

- (1) Maryland Correctional Enterprises²⁹
- (2) Blind Industries and Services of Maryland
- (3) Community Service Providers through the Employment Works Program
- (4) Individual-with-disability-owned businesses

The State keeps a master list of supplies and services provided by preferred providers. If an agency is seeking to procure supplies or services on that list, it must procure what it needs from a preferred provider unless: the preferred provider cannot meet the State's reasonable specifications, including time requirements; the preferred provider's price exceeds the fair market price or exceeds the agency's budget; or the procurement is being made on an emergency basis.³⁰

Minority Business Enterprise Program

The Minority Business Enterprise program requires procurement agencies to structure procurement procedures to try to achieve an overall minimum of 25% of the agency's total dollar value of procurement contracts to be made directly or indirectly with certified MBEs.³¹ In FY 2012 the State had 25.2% MBE participation.³² The FY 2013 totals are not published as of the date of this Report.

Small Business Reserve

The Small Business Reserve Program aims to increase participation in State procurements by small businesses. Under this Program, 23 designated State agencies must structure their procurement procedures to ensure that at least 10% of the agencies' procurement dollars are expended directly with certified small businesses.³³ In FY 2013, the State made payments totaling \$281,637,271 to certified small businesses, which represents 9.02% of the agencies' procurement dollars.³⁴

Small Business Preference

The long-standing Small Business *Preference* Program is distinct from the Small Business *Reserve* Program. The Preference Program establishes a price preference of up to 8% for certified small businesses including veteran-owned and service-disabled veteran-owned small businesses.³⁵ See the Report to the Legislative Policy Committee, *The Small Business Preference Report, FY 2013*.

²⁹ MCE trains and employs offenders within the prison system to produce goods and services that are sold to State and local agencies and nonprofit organizations.

³⁰ COMAR 21.11.05.07

³¹ The MBE goal was raised to 29% in August 2013. COMAR 21.11.03.01

³² *Minority Business Enterprise Program, FY 2012 Report*, Office of Minority Affairs

³³ Title 14, Subtitle 5 of the State Finance and Procurement Article

³⁴ *Report on the Operations and Effectiveness of the Small Business Reserve Program, Fiscal Year 2013*, Board of Public Works

³⁵ Title 14, Subtitle 2 of the State Finance and Procurement Article

Veteran Small Business Program

The Veterans Small Business Program requires procurement agencies to structure procurement procedures to try to achieve an overall minimum of 0.5% of the agency's total dollar value of procurement contracts to be made directly or indirectly with veteran businesses verified by the United States Department of Veterans Affairs.³⁶ FY 2013 was the Program's first reporting year. Agency totals are not yet available as of the date of this Report.

Green Purchasing

The Green Maryland Act of 2010 created the Green Purchasing Committee that provides information, assistance, and guidelines to maximize procurement of environmentally beneficial products and services by State agencies. The Committee's guidelines are contained in the Best Practices Manual.³⁷

VIII. PROCUREMENT ADVISOR ACTIVITIES

As Procurement Advisor, I report the following activities during FY 2013:³⁸

Committees

- Chair, Council for the Procurement of Health, Education, and Social Services
- Member, Council Subcommittee on Electronic Documents
- Staff, Procurement Advisory Council
- Board representative, Senior Procurement Advisors Group
- MBE Liaison, Board of Public Works
- Member, Purchasing card committee
- Coordinator, Managing for Results

Reports

- Annual report to General Assembly on Small Business Reserve Program
- Annual report to General Assembly on Small Business Preference Program
- Annual MBE waiver report
- Individual Surety Bond Report
- Expedited Procurement Report
- Certified MBE Report
- Veteran Small Business Report

Regulations/Policy

- COMAR Title 21 – current
- Board of Public Works procurement advisories – current

³⁶ Title 14, Subtitle 6 of the State Finance and Procurement Article

³⁷ www.dgs.maryland.gov/Procurement/Green/BestPractices

³⁸ §12-102(a)(2)(x)

Communication

- Regularly advise General Assembly and Office of Legislative Audits
- Monitored OLA reports and assisted agencies with respect to procurement findings
- Brief procurement officers from counties and schools on procurement legislation
- Brief Maryland Public Purchasing Association on changes to procurement laws and regulations
- Advise Senior Procurement Advisors Group on procurement best practices, procurement laws, and Board policy
- Instruct MBE liaisons on implementing Veteran Small Business Program

IX. PROCUREMENT REFORM

In FY 2013 the Board of Public Works contracted with a consulting firm to:

- Analyze State procurement laws and policies and specified agency business processes.
- Develop a design for improved business processes.
- Develop a plan that the State can use to implement the change process.

The *Comprehensive Process Design Report and Implementation Plan* for the procurement improvement review was published in May 2013. The Report contains eleven recommendations, prioritized by the consultant as follows:

High Priority Goals

- (1) Promulgate single set of procedures through a procurement manual.
- (2) Establish Statewide training and increase procurement delegation as skill levels improve.
- (3) Enforce best practices for contract management including a clear definition of a contract manager's role.
- (4) Create a strategic sourcing plan to leverage the State's buying power.
- (5) Re-focus Board staff on procurement process improvements, rather than auditing.

Lower Priority Goals

- (1) Revise State's procurement mission statement to reflect procurement as a steward of taxpayer dollars.
- (2) Develop performance metrics.
- (3) Revise the contract appeals process.
- (4) Evaluate impact of new legislation on procurement.
- (5) Establish improved procurement career track.
- (6) Increase number of vendors applying for State MBE certification and increase MBE training.

Objectives

The procurement reform team, comprising Board staff and representatives from primary procuring agencies, will begin work on a discrete set of projects that are anticipated to have a significant, positive impact on Maryland procurement:

- (1) Develop comprehensive Statewide training program
- (2) Create procurement manual that provides simplified, step-by-step procedures for all types of procurements. The manual will summarize and simplify procurement laws and policies.
- (3) Increase procurement transparency through technology and enhanced communication with the contracting community.

X. RECOMMENDATION

Training

Procurement expertise within agencies is dwindling as senior staff retire. Few agencies develop a mentorship program to ensure junior staff have the requisite expertise. Current training classes are neither comprehensive nor consistent. With billions of dollars spent annually, public procurement is a significant economic driver for the State. Poorly-executed procurements are costly to State agencies, contractors, and taxpayers. With so much at stake, the State must have a well-trained, professional workforce to navigate the complexities of public procurement. Training development – a priority for the State – must be adequately staffed and funded.

Transparency

Data Accessibility: Procurement data available to the public is limited. Contractor payment information is accessible through the *Maryland Funding Accountability and Transparency* website. Solicitation information is available on *eMaryland Marketplace*. Some agencies post larger contracts on their individual websites.

More types of procurement data should be publicly-accessible. Citizens should be able to obtain contract award information by contractor and by agency. The public should be able to monitor the progress of open solicitations.

Enhanced communication with private sector: Drafting a concise, effective solicitation is critical to laying the right foundation for a procurement. Procurement staff are hard-pressed to keep current with the marketplace from which they are buying given emerging technologies, rapidly-evolving standards for sustainable purchasing, and shifting laws and policies. It is important for agencies to leverage private-sector expertise to ensure they are developing suitable solicitations that will attract rigorous competition and provide the best value to the State.

Transparency and open communication are critical to increasing public confidence in the procurement process. In his 2009 Inaugural Address, President Barack Obama recognized the importance of transparency in government practice:

“And those of us who manage the public's dollars will be held to account, to spend wisely, reform bad habits, and do our business in the light of day, because only then can we restore the vital trust between a people and their government.”



Fiscal Year 2013 Summary

Categories of Work	Contract Award Amount - State Agencies other than MDOT	Contract Award Amount - MDOT
<i>Commodities, Supplies, and Equipment</i>	\$201,484,052	\$136,222,619
<i>Services</i>	\$1,069,227,138	\$554,635,144
<i>Architect and Engineering</i>	\$6,772,472	\$218,326,421
<i>Human, Cultural, Social and Educational Services</i>	\$825,378,832	-----
<i>IT</i>	\$317,784,078	\$30,453,760
<i>IT Hardware</i>	\$100,213,106	\$10,300,988
<i>IT Software</i>	\$61,218,154	\$8,362,040
<i>Construction</i>	\$371,298,497	\$656,262,596
<i>Construction-Related Services</i>	\$1,646,479	\$1,658,811
<i>Capital Equipment</i>	\$93,659	\$803,875
<i>Maintenance</i>	\$70,634,278	\$781,562,199
<i>Energy Performance</i>	\$196,707	-----
<i>Leases Other Than Real Property</i>	\$877,118	\$384,598
<i>Revenue</i>	\$9,461,873	-----
Totals	\$3,036,286,443	\$2,398,973,051