

STATE OF MARYLAND
Board of Public Works

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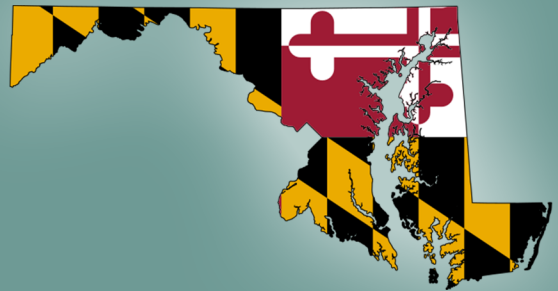
PROCUREMENT ADVISOR'S REPORT

February 11, 2020

Gabriel Gnall, *Procurement Advisor*
John Gontrum, *Executive Secretary*

Board of Public Works
80 Calvert Street
Treasury Bldg, Room 117
Annapolis, Maryland 21401

bpw.maryland.gov



Fiscal Years 2017 & 2018

MARYLAND
BOARD OF PUBLIC WORKS

Governor Treasurer Comptroller

John Gontrum, Esq.
Executive Secretary

Gabriel Gnall, Esq.
Procurement Advisor

David Bohannon, Esq.
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February 11, 2020

The Honorable Lawrence J. Hogan, Jr.
State House
Annapolis, MD 21401

The Honorable Bill Ferguson
H-107 State House
Annapolis, MD 21401

The Honorable Nancy K. Kopp
80 Calvert St.
Annapolis, MD 21401

The Honorable Adrienne Jones
H-101 State House
Annapolis, Maryland 21401-1991

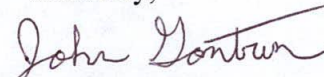
The Honorable Peter Franchot
80 Calvert St.
Annapolis, MD 21401

Dear Board Members, Mr. President, and Madam Speaker:

It is our pleasure to present to the Board of Public Works and the General Assembly the State Procurement Report for Fiscal Years 2017 and 2018, primarily authored by the Procurement Advisor, Gabriel Gnall. The report, as required by State law, includes:

- (1) Information on actions necessary to improve effective broad-based competition in procurement¹; and
- (2) The Procurement Advisor's findings and recommendations for improvements to the procurement system to effect broad-based competition².

Sincerely,


John Gontrum

cc: Sarah Albert, Legislative Services
Enoch Pratt Free Library

¹ Finance and Procurement Article, § 12-101(b)(7), Annotated Code of Maryland.

² Finance and Procurement Article, § 12-102(a)(2)(x), Annotated Code of Maryland.

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I. SCOPE OF THE REPORT

This is the Fiscal Years 2017 and 2018 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 YEARS 2017 & 2018

In **fiscal year 2017**, the State procured over \$7.57 billion in goods and services which was a 2% increase from FY 2016.³ 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 \$6 billion in contract awards and contract modifications⁴. The Board-approved total *does* include University contracts, so the two numbers are not directly comparable.

	FY17 Submitted	FY17 Approved	Disapproved/ Deferred	Total Dollars (billions)
Contracts	662	620	6	\$4.64
Modifications	261	247	14	\$1.36

In **fiscal year 2018**, the State procured over \$8.35 billion in goods and services which was a 10% increase from FY 2017.⁵ The State total does *not* include procurements by the University System of Maryland, Morgan State University, or St. Mary’s College of Maryland.

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 2016 contract award total was \$7.7 billion. Source: Statewide and MDOT Advanced Purchase Inventory Control System (ADPICS).

⁴ FY 2020 Managing For Results (MFR), Board of Public Works – FY 2017 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2020/Board-of-Public-Works-MFR.pdf

⁵ Source: Statewide and MDOT Advanced Purchase Inventory Control System (ADPICS).

During that same period, the Board of Public Works approved \$4.25 billion in contract awards and contract modifications.⁶ The Board-approved total *does* include University contracts, so the two numbers are not directly comparable.

	FY18 Submitted	FY18 Approved	Disapproved/ Deferred	Total Dollars (billions)
Contracts	776	718	5	\$3.46
Modifications	179	171	0	\$0.79

Totals represent contract award amounts, which is the approved amount that may be spent during the contract term.

III. STATE PROCUREMENT GOALS

The General Assembly has articulated the State Procurement Law’s manifold purposes:⁷

1. Provide for increased confidence in State procurement.
2. Ensure fair and equitable treatment of all persons who deal with the procurement system.
3. Provide safeguards for maintaining a procurement system of quality and integrity.
4. Foster effective broad-based competition through support of the free enterprise system.
5. Promote increased long-term economic efficiency and responsibility by encouraging the use of recycled materials.
6. Provide increased economy in the State Procurement system.
7. Simplify, clarify and modernize the State Procurement Law.
8. Continue to develop procurement regulations, policies, and practices.
9. 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

⁶ FY 2020 Managing For Results (MFR), Board of Public Works – FY 2018 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2020/Board-of-Public-Works-MFR.pdf

⁷ § 11-201(a).

operating procedures. Board operations are directed by the Executive Secretary⁸ with the Board's Procurement Advisor and General Counsel serving statutorily delineated duties.⁹

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 exempt the agency or program "from Division II of the State Finance and Procurement Law."¹⁰ 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.¹¹ Exemption also means further decentralization of the State's procurement process.¹² A complete 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 latter procurements are subject to Division II of the State Finance and Procurement Law but are excepted from Board of Public Works jurisdiction.¹³

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.¹⁴

Procurement Advisory Council: The Procurement Advisory Council (PAC), chaired by the Board's Executive Secretary, was comprised of 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.¹⁵ During FY 2017 and FY 2018 the PAC was 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.¹⁶

⁸ § 10-201.

⁹ § 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).

¹⁰ For example, the Maryland Health Benefit Exchange is exempt under the Insurance Article, §31-103.

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

¹² 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.

¹³ § 12-202.

¹⁴ § 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).

¹⁵ § 12-105.

¹⁶ § 12-105(g).

Primary Procurement Units: During FY 2017 and FY 2018 seven primary procurement units, subject to the authority of the Board of Public Works, had jurisdiction over State procurement as follows:¹⁷

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

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

¹⁷ § 12-107.

Procurement Delegations: As stated, the seven primary procurement units were authorized to 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. Those delegations and re-delegations during FY 2017 and FY 2018 are summarized below:

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, 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, rental vehicle contracts for using agencies, 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 providers¹⁸
- \$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

¹⁸ See Section V. *infra* for discussion of preferred providers.

- 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
- Sole source, 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
- Sole source, 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
- Sole source, 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. 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.¹⁹

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.²⁰ Offerors are ranked based on technical and price proposals.

Negotiated Award After Unsatisfactory Competitive Sealed Bidding. If a competitive-sealed-bid procurement produces bids that are rejected, in excess of available funds, or are unreasonable, 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.²¹

Sole Source. The sole source procurement method may be used if only one source for the goods or services is available.²²

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.²³ 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. The Airport 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 that do not exceed \$50,000 (or \$100,000 for DGS construction contracts).²⁴

¹⁹ § 13-103. The award may be made to the "bid most favorable to the State" for certain revenue-producing contracts under §11-202(3).

²⁰ §§ 13-104, 13-105.

²¹ COMAR 21.05.04.01.

²² § 13-107.

²³ § 13-108.

²⁴ § 13-109.

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.²⁵ 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.²⁶ Nonprofits also have the authority to piggyback off government cooperative purchasing agreements.

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.²⁷

Noncompetitive Negotiated Procurement. Restricted to certain human, social, or educational services, allowing awards based on “the best interests of the State.”²⁸

BPW Approvals By Method:

FY 2017 awards²⁹:

Competitive Sealed Bid	Competitive Sealed Proposals	Single Bid/Proposal	Sole Source	Emergency/ Expedited	Other
217	92	41	66	63	133

FY 2018 awards³⁰:

Competitive Sealed Bid	Competitive Sealed Proposals	Single Bid/Proposal	Sole Source	Emergency/ Expedited	Other
221	107	25	113	84	86

NOTABLE:

- The number of sole-source contract awards increased significantly in FY 2018.
- The number of contract awards resulting from a single received bid or proposal has decreased significantly, from 41 in FY 2017 to 25 in FY 2018.

²⁵ § 13-111

²⁶ § 13-110

²⁷ State Finance and Procurement Article, Title 13, Subtitle 3.

²⁸ § 13-106

²⁹ FY 2020 Managing For Results (MFR), Board of Public Works – FY 2017 actual data.

https://dbm.maryland.gov/Documents/MFR_documents/2020/Board-of-Public-Works-MFR.pdf

³⁰ FY 2020 Managing For Results (MFR), Board of Public Works – FY 2018 actual data.

https://dbm.maryland.gov/Documents/MFR_documents/2020/Board-of-Public-Works-MFR.pdf

Encouraging Competition

The Procurement Advisor, together with the Board's General Counsel and its Records Manager, have worked with the Procurement Advisory Council and Senior Procurement Advisory Group to ensure agencies are using procurement best practices to maximize procurement competition. Best practices include:

- Writing specifications to make sure they are not overly restrictive.
- Writing solicitations in plain English.
- Safeguarding against incumbency advantages by establishing reasonable proposal deadlines and not placing unnecessary significance on past performance as an evaluation factor.
- Encouraging direct solicitation notices and notifications in forums in addition to posting on *eMaryland Marketplace*, especially for unique requirements.
- Upon receipt of a single bid/proposal, taking appropriate action including re-soliciting when feasible and further reducing any restrictive requirements.

VI. 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.³¹ These entities are referred to as preferred providers. They are, in order of preference:

- (1) Maryland Correctional Enterprises³²
- (2) Blind Industries and Services of Maryland
- (3) The Employment Works Program, including community service providers and 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.³³

³¹See generally §§ 14-101 – 14-109

³²MCE trains and employs offenders within the prison system to produce goods and services that are sold to State and local agencies and nonprofit organizations.

³³COMAR 21.11.05.07

Minority Business Enterprise Program

- *Goal:* The Minority Business Enterprise program requires procurement agencies to structure procurement procedures to try to achieve an overall minimum of 29% of the agency's total dollar value of procurement contracts to be made directly or indirectly with certified MBEs.³⁴
- *FY 2017:* The State had 21% MBE participation.³⁵ This was slightly higher than the 20.2% participation in FY 2016.³⁶
- *FY 2018:* The State had 15.1% MBE participation.³⁷ This was significantly lower than the 21% participation in FY 2017.

Veteran Small Business Program

- *Goal:* The Veterans Small Business Program requires procurement agencies to structure procurement procedures to try to achieve an overall minimum of 1%³⁸ of the agency's total dollar value of procurement contracts to be made directly or indirectly with veteran-owned small business enterprises.
- *FY 2017:* Veteran-owned small business participation for FY 2017 was 0.49% – approximately half of the 1% statewide goal.³⁹ While still well below the statutory goal, this was a significant increase from FY 2016's 0.24% participation rate.⁴⁰
- *FY 2018:* Veteran-owned small business participation for FY 2017 was 2.10% – more than double the 1% statewide goal.⁴¹ FY 2018 was the first year that agencies' combined results not only met the State's goal of 1%, but also significantly surpassed the goal.

Small Business Reserve

- *Goal:* The Small Business Reserve Program aims to increase participation in State procurements by small businesses. In FY 2017, 23 designated State agencies were required to structure their procurement procedures to ensure that at least 10% of the agencies' procurement dollars were expended directly with certified small businesses.⁴² Effective October 1, 2017, the Small Business

³⁴ COMAR 21.11.03.01

³⁵ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2017* [https://gomdsmallbiz.maryland.gov/Reports/FY2017_AnnualReport_GOSBA\(2\).pdf](https://gomdsmallbiz.maryland.gov/Reports/FY2017_AnnualReport_GOSBA(2).pdf)

³⁶ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2016* https://gomdsmallbiz.maryland.gov/Reports/FINAL.FY2016_Annual_Report.pdf

³⁷ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2018* https://gomdsmallbiz.maryland.gov/Reports/FY2018_Annual%20Report_GOSBA.pdf

³⁸ § 14-602

³⁹ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Veteran-Owned Small Business Program, Fiscal Year 2017* <https://bpw.maryland.gov/Publications/FY17-VSBE-Report.pdf>

⁴⁰ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Veteran-Owned Small Business Program, Fiscal Year 2016* <https://bpw.maryland.gov/Publications/FY16-VSBE-Report.pdf>

⁴¹ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Veteran-Owned Small Business Program, Fiscal Year 2018* <https://bpw.maryland.gov/Publications/FY18-VSBE-Report.pdf>

⁴² Title 14, Subtitle 5 of the State Finance and Procurement Article

Reserve Program was expanded significantly, following recommendations made by the 2016 Commission to Modernize State Procurement.⁴³ The changes to the Program included:

- Expanding eligibility in the program from 23 designated agencies to all State procurement units.
 - Increasing the Small Business Reserve goal from 10% to 15% of all State procurement unit expenditures.
 - Limiting the types of expenditures that may be counted towards the Small Business Reserve goal to only expenditures under contracts that resulted from procurements designated as Small Business Reserve procurements. i.e. If a procurement is not given the Small Business Reserve designation, limiting competition to only small businesses, the resulting contract's expenditures may not be counted towards the 15% Small Business Reserve goal, even if the contracts is awarded to a certified small business.
- *FY 2017*: The State made payments totaling \$389,672,898 to certified small businesses, which represents 9.36% of the agencies' procurement dollars.⁴⁴ This is higher than the \$301,751,929 total in FY 2016 (7.70% of total FY 2016 spend).⁴⁵
 - *FY 2018*: The State made payments totaling \$408,853,970 to certified small businesses, which represents 10.2% of the agencies' procurement dollars.⁴⁶ This is yet again higher than the previous year's total spend.

Small Business Preference

- *Goal*: The *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. The Preference Program is limited to the Departments of General Services and Transportation, the University System of Maryland, and Morgan State University for the procurement of supplies, services, and construction-related services, and the Department of Public Safety and Correctional Services in connection with State correctional facility construction.⁴⁷
- The expansion, use, and popularity of the *Small Business Reserve* Program has led to the lack of use and efficaciousness of the *Small Business Preference*

⁴³ Chapter 438 (Laws of 2017) revised §§14-501 – 14-505 of the State Finance & Procurement Article.

⁴⁴ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Small Business Reserve Program, Fiscal Year 2017*, Board of Public Works.
<https://bpw.maryland.gov/Publications/FY%202017%20Small%20Business%20Reserve%20Program%20Report.pdf>

⁴⁵ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Small Business Reserve Program, Fiscal Year 2016*, Board of Public Works.
<https://bpw.maryland.gov/Publications/FY%202016%20Small%20Business%20Reserve%20Report.pdf>

⁴⁶ *Report to the Legislative Policy Committee on the Operations and Effectiveness of the Small Business Reserve Program, Fiscal Year 2018*, Board of Public Works.
<https://bpw.maryland.gov/Publications/FY%202018%20Small%20Business%20Reserve%20Program%20Report.pdf>

⁴⁷ Title 14, Subtitle 2 of the State Finance and Procurement Article

Program. No State agencies reported significant contract awards in FY 2017 based on application of the preference. This pattern has been consistent over the last seven fiscal years even as agencies have increased outreach and encouragement of small business participation. The primary reason for this is that the Small Business Reserve Program is a much more effective program for soliciting and awarding contracts to small businesses. With the recent changes to the Small Business Reserve Program, the Small Business Preference Program has been left by the wayside; the effectiveness of the Preference Program in State procurements has become questionable. See *The Small Business Preference Program Report, FY 2017*.⁴⁸

Green Purchasing

The Green Purchasing Committee provides information, assistance, and guidelines to maximize procurement of environmentally beneficial products and services by State agencies.⁴⁹ State agencies annually report to the Department of General Services on the purchases of environmentally preferable products and services.⁵⁰

VII. PROCUREMENT ADVISOR ACTIVITIES

As Procurement Advisor, I report the following activities:⁵¹

Committees and Organizations

- Chair, Council for the Procurement of Health, Education, and Social Services
- Staff, Procurement Advisory Council
- Board representative, Senior Procurement Advisors Group
- MBE Liaison, Board of Public Works
- Coordinator, Board of Public Works Managing for Results
- Member, National Association of State Procurement Officials (NASPO)
- Member, National Institute of Governmental Purchasing (NIGP)
- Member, Maryland Public Purchasing Association (MPPA)
- Member, Maryland Bar
- Certified Public Procurement Officer (CPPO)
- Certified Professional Public Buyer (CPPB)

Reports

- Annual report to General Assembly on Small Business Reserve Program

⁴⁸ https://bpw.maryland.gov/Publications/FY2017_Small-Business-Preference-Program.pdf

⁴⁹ <http://dgs.maryland.gov/Pages/GreenOperations/GreenPurchasing/index.aspx>

⁵⁰ http://dgs.maryland.gov/Pages/Publications/green_purchasing_annual_reports.aspx

⁵¹ § 12-102(a)(2)(x)

- Annual report to General Assembly on Small Business Preference Program
- Annual MBE waiver report
- Certified MBE Report
- Veteran Small Business Report

Regulations/Policy

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

Communication

- Regularly advise General Assembly and Office of Legislative Audits
- Monitor Office of Legislative Audits reports and assist agencies with respect to procurement findings
- Brief procurement officers from counties and schools on procurement legislation and State procurement trends
- 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 of Public Works policy
- Instruct MBE liaisons on implementing Veteran Small Business Program

VIII. RECENT CHANGES TO STATE PROCUREMENT

Procurement Reform

Four State-level reviews of State procurement have been conducted in the past six years, with each review resulting in a report:

- *May 2013: Procurement Improvement Review, State of Maryland* by Treya Partners, a consultant procured by the Board of Public Works to look at current challenges to the State’s procurement system, with detailed findings, recommendations, and supporting analysis.⁵²
- *November 2014: Review of Maryland’s Procurement Policies and Structures* by the Department of Legislative Services, built on the 2013 report by Treya Partners and made recommendations for statutory and administrative changes to improve State procurement.⁵³

⁵² *Procurement Improvement Review, State of Maryland*, May 2013, Treya Partners.
<http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/017000/017746/unrestricted/20131758e.pdf>

⁵³ *Review of Maryland’s Procurement Policies and Structures*, November 2014, Department of Legislative Services
<http://dls.maryland.gov/pubs/prod/TaxFiscalPlan/Review-of-Marylands-Procurement-Policies-and-Structures.pdf>

- *June 2016: Reforming State Procurement for Maryland Businesses*, the report of the One Maryland Blue Ribbon Commission, surveyed vendors and State procurement officers to study procurement challenges faced by Maryland businesses.⁵⁴
- *December 2016: Report of the Commission to Modernize State Procurement*, the result of a nearly year-long review of the State’s procurement code, regulations, and procedures contained 57 recommendations to improve and modernize State procurement.⁵⁵

Common themes among these reports included improving the training of State procurement staff, modernizing the State’s procurement information technology systems and software, simplifying solicitation templates and other procurement documents, and centralizing procurement authority.

The 2017 legislative session included several bills to reform the State’s procurement system based on recommendations made in the reports detailed above. Notable bills from that session and a summary of the changes to the procurement code included:

- *HB1021 / CH 590 – Reorganization of State Procurement*
 - Transferred the primary procurement authorities of the Departments of Budget and Management, Information Technology, and Public Safety and Correctional Services to the Department of General Services.
 - Established a Chief Procurement Position (CPO) within the Department of General Services.
 - Reorganized the Procurement Advisory Council (PAC) as the Procurement Improvement Council (PIC) with the CPO as the chair.
 - Effective date for most statutory changes was October 1, 2019.
- *SB309 / CH438 – Small and Minority Business Participation*
 - Expanded the Small Business Reserve Program – see Section VI above.
 - Incorporated the federal “60%” rule into the Minority Business Enterprise Program, allowing 60% of supply and material costs from an MBE to counted toward the State contract’s MBE goal.
 - Clarified the remove of MBEs from contracts for “good cause.”
- *SB310 / CH587 – Promoting Efficiencies in State Procurement*
 - Authorized the Departments of General Services, Transportation, and Budget and Management to utilize the master contracting procurement method.

⁵⁴ “*Reforming State Procurement for Maryland Businesses*” June 2016, One Maryland Blue Ribbon Commission <https://marylandassociationofcounties.files.wordpress.com/2016/07/reforming-state-procurement-for-maryland-businesses.pdf>

⁵⁵ *Report of the Commission to Modernize State Procurement*, December 2016, Lt. Governor Boyd K. Rutherford, Chair <https://governor.maryland.gov/ltgovernor/wp-content/uploads/sites/2/2016/12/Commission-to-Modernize-State-Procurement-Final-Report-web.pdf>

- Repealed the General Professional Services Selection Board (GPSSB) and the Transportation Professional Services Selection Board (TPSSB) for review of architectural and engineering contracts.
- *SB311 / CH588 – Improving the State Procurement Oversight Structure*
 - Repealed the statutory preference for using the competitive sealed bidding procurement method.
 - Raised the threshold for small procurements from \$25,000 to \$50,000. Construction small procurement threshold raised from \$50,000 to \$100,000.

eMaryland Marketplace

In July 2017, the then-current contract with the eMaryland Marketplace service provider was extended for two years to July 27, 2019. During this period of time, the Department of General Services, Budget and Management, and Information Technology drafted a new solicitation for the procurement of a new eMaryland Marketplace information technology service contract. With participation by the Office of the Comptroller and the State Treasurer’s Office, evaluation of proposals was conducted in 2018. A new contract award recommendation to Nitor Partners was approved by the Board of Public Works on March 6, 2019 in the amount of \$38 million, with services under the new contract scheduled to start in the summer of 2019.

Procurement Manual

Recommendation 4.2 of the Report of the Commission to Modernize State Procurement tasked a workgroup of designated State procurement staff to create and eventually distribute a State of Maryland Procurement Manual, as well as establish a system for periodically updating the Manual. This Manual is to promote standardized best practices for the planning, conducting, and completion of procurements, with an emphasis on consistent practices under the State’s procurement regulations. It is to be electronically accessible for use by all State agencies and the business community and will later be used in the development of a Maryland Procurement Training Curriculum (Recommendation 4.2 of the Report of the Commission to Modernize State Procurement).

The first iteration of the Procurement Manual has been completed and published on the State’s main procurement portal webpage.⁵⁶ Continued development and use of this manual should provide consistency in procurement practices across all State agencies and form the basis of a much-needed ongoing State procurement training curriculum.

Looking Forward

The Board of Public Works looks forward to working with the General Assembly and procuring agencies to identify additional best practices for State procurement,

⁵⁶ *Maryland Procurement Manual* <https://procurement.maryland.gov/maryland-procurement-manual-1-introduction-and-general-overview/>

recommendations and potential changes to the procurement law, and to assist in the training and consistent application of those best practices and new laws.

Fiscal Year 2017 Summary

Categories of Work	Contract Award Amount - State Agencies other than MDOT	Contract Award Amount - MDOT
<i>Commodities, Supplies, and Equipment</i>	\$205,762,814.87	\$177,893,667.52
<i>Services</i>	\$3,285,451,136.72	\$290,075,592.73
<i>Architect and Engineering</i>	\$17,752,959.57	\$555,206,122
<i>Human, Cultural, Social and Educational Services</i>	\$478,398,595.28	N/A
<i>IT</i>	(\$3,790,532.26)	\$19,438,064.42
<i>IT Hardware</i>	\$13,513,937.40	\$37,739,556.69
<i>IT Software</i>	\$321,954,039.78	\$119,225,438.63
<i>Construction</i>	\$666,064,011.01	\$988,946,564.05
<i>Construction-Related Services</i>	\$1,802,823	\$12,771,496.76
<i>Capital Equipment</i>	\$18,474.46	\$843.08
<i>Maintenance</i>	\$63,056,699.29	\$282,733,744.55
<i>Energy Performance</i>	\$17,628,913	N/A
<i>Revenue</i>	\$7,832,236.84	\$10,970,420
<i>Leases</i>	\$2,079,697.16	\$37,434.70
<i>Change Order (MDOT)</i>	--	(\$125.73)
Totals	\$5,077,525,805.75	\$2,495,038,819.40

Fiscal Year 2018 Summary

Categories of Work	Contract Award Amount - State Agencies other than MDOT	Contract Award Amount - MDOT
<i>Commodities, Supplies, and Equipment</i>	\$219,420,158.60	\$836,377,035.93
<i>Services</i>	\$3,099,396,143.17	\$486,775,932.70
<i>Architect and Engineering</i>	\$23,413,813.90	\$357,340,264.18
<i>Human, Cultural, Social and Educational Services</i>	\$467,711,748.59	\$10,000
<i>IT</i>	\$111,700,270.77	\$8,287,737.63
<i>IT Hardware</i>	\$17,873,562.10	\$17,806,088.42
<i>IT Software</i>	\$218,350,060.38	\$78,524,943.92
<i>Construction</i>	\$536,514,485.37	\$1,060,815,635.69
<i>Construction-Related Services</i>	\$17,968,717.80	(\$1,200,255.69)*
<i>Capital Equipment</i>	\$40,096.56	\$36,845
<i>Maintenance</i>	\$194,281,534.71	\$515,487,677.42
<i>Energy Performance</i>	\$20,532,268.05	\$12,066,755
<i>Revenue</i>	\$8,298,301.86	\$43,346,875
<i>Leases</i>	\$1,627,388.20	\$478,268
Totals	\$4,937,128,550.06	\$3,416,153,803.20

*Upon inquiry, the Maryland Department of Transportation confirmed awarding only \$57,581.59 in construction-related services contracts in FY18 while processing change orders totaling –(\$1,200,225.69) during the same period.