

MARYLAND
BOARD OF PUBLIC WORKS

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March 4, 2022

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

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

The Honorable Dereck E. Davis
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 Year 2021, 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 § 12-102(a)(2)(x).

STATE OF MARYLAND
Board of Public Works

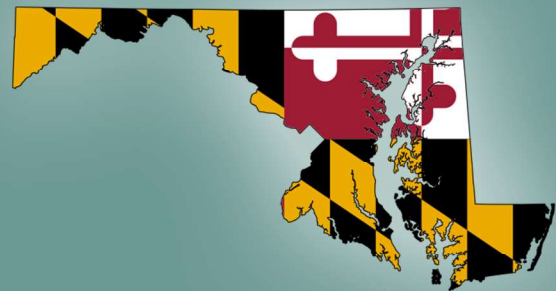
GOVERNOR • TREASURER • COMPTROLLER

PROCUREMENT ADVISOR'S REPORT

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

Board of Public Works
80 Calvert Street
Treasury Bldg, Room 117
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Fiscal Year 2021

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I. SCOPE OF THE REPORT

This is the Fiscal Year 2021 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 2021

In fiscal year 2021 the State procured nearly \$8.0 billion in goods and services which was a 138.75% decrease from FY 2020.³ 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 \$5.60 billion in contract awards and contract modifications.⁴ The Board-approved total does not include contract renewal options but does include University contracts, so the State total and Board of Public Works approved totals are not directly comparable.

	FY21 Submitted	FY21 Approved	Disapproved/ Deferred	Total Dollars (billions)
Contracts	786	764	5	\$4.40
Modifications	203	195	1	\$1.20

Totals represent contract award and modification/change order amounts, which are the approved amounts 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 2020 total was \$19.1 billion, primarily due to several multi-billion-dollar health benefits contracts renewal options approved in FY 2020, as well as a significant increase in emergency procurement awards due to the COVID-19 pandemic. Source: Statewide and MDOT Advanced Purchase Inventory Control System (ADPICS).

⁴ FY 2023 Managing For Results (MFR), Board of Public Works – FY 2021 actual data.

https://dbm.maryland.gov/Documents/MFR_documents/2023/Board-of-Public-Works-MFR.pdf

III. STATE PROCUREMENT GOALS

The General Assembly has articulated the State Procurement Law's purposes and policies as follows:⁵

1. Providing for increased confidence in State procurement;
2. Ensuring fair and equitable treatment of all persons who deal with the State procurement system;
3. Providing safeguards for maintaining a State procurement system of quality and integrity;
4. Fostering effective broad-based competition in the State through support of the free enterprise system;
5. Promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;
6. Providing increased economy in the State Procurement system;
7. Getting the maximum benefit from the purchasing power of the State;
8. Simplifying, clarifying, and modernizing the law that governs State procurement;
9. Allowing the continued development of procurement regulations, policies, and practices in the State; and
10. Promoting development of uniform State 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 (Code of Maryland 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 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

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.

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 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.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/Improvement 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. During FY 2019 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. Beginning in FY 2020, the PAC was changed to the Procurement Improvement Council (PIC), with similar responsibilities and members but with the newly-created position of the Chief Procurement Officer (CPO) as the Chair.¹³

Primary Procurement Units: During FY 2021 four primary procurement units, subject to the authority of the Board of Public Works, had jurisdiction over State procurement as follows:¹⁴

State Treasurer may engage in or control procurement of:

- Banking
- Financial services
- Insurance
- Insurance services

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

- Real property leases

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.

¹¹ § 12-202.

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

¹³ § 12-105.

¹⁴ § 12-107.

- Commodities and supplies
- Construction and construction-related services
- Architectural and engineering services
- Services
- Leases of motor vehicles
- Construction and construction-related services for State correctional facilities
- Supplies, materials, and equipment to support construction and construction-related services for State correctional facilities
- Information processing equipment and associated services
- Telecommunications equipment, systems, or services

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

- Transportation-related construction and construction services
- Transportation-related architectural 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 architectural and engineering services
- Leases of real property for Port-related activities unless lease payments are from the General Fund

Procurement Delegations: The four primary procurement units are 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;¹⁵ in turn, those units re-delegated to other procurement agencies some of their BPW-delegated authority to approve contract awards. The delegations and re-delegations during FY 2021 are summarized below:

Department of General Services

- Capital construction contracts, construction-related services contracts, information technology contracts, service contracts, architectural and engineering contracts, maintenance contracts, contracts for rental vehicles supplied to using agencies in accordance with COMAR 21.02.05.08, capital construction change orders, and capital construction-related service change orders in the amount of \$200,000 or less;
- For any single item of equipment or single equipment lease, equipment contracts and leases of equipment in the amount of \$200,000 or less,

¹⁵ COMAR 21.02.01.04.

unless funded with general obligation bond proceeds which must be approved by the Board regardless of amount;

- Contract modifications, excluding construction contract change orders, that:
 - (a) Do not materially change the scope of the original contract;
 - (b) Individually do not change the amount of the contract, or any cost component of the contract, by more than \$50,000; or
 - (c) Exercise by a using agency a contract option of \$200,000 or less;
- Invoices necessary for the administration of capital improvement contracts;
- All contracts for the purchase of commodities and supplies, except for contracts for single items of equipment or single equipment leases in an amount over \$200,000;
- Contracts in the amount of \$100,000 or less resulting from sole source procurement;
- Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received;
- Leases for agency-supplied employee housing; and
- Purchasing, leasing, and rental contracts for the acquisition of motor vehicles for use by State officials and employees.

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

- \$50,000 (small procurements) for contracts other than vehicle leases;
- \$200,000 for contracts with preferred providers (Maryland Correctional Enterprises, Blind Industries and Services of Maryland, and the Employment Works Program - Community Services Providers and Individuals with Disability Owned Businesses);
- \$200,000 for facility maintenance contracts;
- \$200,000 to the Department of Public Safety and Correctional Services for construction and construction-related services.
- \$100,000 to the Department of Transportation, Department of Human Services, and the Maryland Department of Health for services and information technology contracts; and
- \$100,000 to the Maryland Department of State Police for helicopter maintenance contracts.

Department of Transportation

- Transportation-related construction contracts and change orders in the amount of \$200,000 or less;
- Capital construction-related service contracts and change orders in the amount of \$200,000 or less;
- Architectural and engineering contracts in the amount of \$200,000 or less;
- Maintenance contracts in the amount of \$200,000 or less;

- For any single item of equipment or single equipment lease within the procurement authority of the Secretary of Transportation or the Maryland Transportation Authority, equipment contracts and leases of equipment in the amount of \$200,000 or less unless funded with general obligation bond proceeds, which must be approved by the Board regardless of amount;
- Contract modifications, excluding construction contract change orders, that:
 - (i) Do not materially change the scope of the original contract;
 - (ii) Individually do not change the amount of the contract, or any cost component of the contract, by more than \$50,000; or
 - (iii) Exercise a contract option of \$200,000 or less;
- Contracts in the amount of \$100,000 or less resulting from sole source procurement;
- Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received; and
- Supplies and services for aeronautics-related activities

Treasurer

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

Maryland Port Commission

- Construction contracts and change orders for Port facilities in the amount of \$200,000 or less;
- Construction-related service contracts and change orders for Port facilities in the amount of \$200,000 or less;
- Port-related architectural services and engineering services contracts in the amount of \$200,000 or less;
- Port-related maintenance contracts in the amount of \$200,000 or less;
- For any single item of equipment or single equipment lease within the procurement authority of the Maryland Port Commission, equipment contracts and leases of equipment in the amount of \$200,000 or less unless funded with general obligation bond proceeds, which must be approved by the Board regardless of amount;
- Service contracts for the Maryland Port Administration, including information technology services, but excluding banking, insurance, and financial services, in the amount of \$200,000 or less;
- Contract modifications, excluding construction contract change orders, that:
 - (a) Do not materially change the scope of the original contract;
 - (b) Individually do not change the amount of a contract, or any cost component of the contract, by more than \$50,000;
 - (c) Exercise a contract option of \$200,000 or less; or
 - (d) Change cargo and equipment handling rates in stevedoring or terminal services contracts approved by the Board when the contract modification, either individually or in combination with

- previous contract modifications, does not change the price of the original contract by more than 20 percent.
- Contracts for the purchase by the Maryland Port Administration of commodities and supplies:
 - (a) Including:
 - (i) Motor vehicles; and
 - (ii) Information technology supplies; but
 - (b) Excluding:
 - (i) Insurance and insurance-related services;
 - (ii) Commodities and supplies funded by State general obligation bond proceeds;
 - Contracts in the amount of \$100,000 or less resulting from sole source procurement;
 - Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received; and
 - Leases of real property for Port-related activities having a value of \$50,000 or less per year, and provided the lease payments, in whole or in part, are not paid from the General Fund.

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.¹⁶

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.¹⁷ 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.¹⁸

Noncompetitive Negotiated Procurement. Restricted to certain human, social, or educational services, allowing awards based on “the best interests of the State.”¹⁹

¹⁶ § 13-103. The award may be made to the “bid most favorable to the State” for certain revenue-producing contracts under § 11-202(3).

¹⁷ §§ 13-104, 13-105.

¹⁸ COMAR 21.05.04.01.

¹⁹ § 13-106

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

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 (MAA) 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 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 that do not exceed \$50,000 (or \$100,000 for DGS or MDOT construction contracts).²²

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

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.²⁴ DGS uses this method to purchase electricity.

Architectural and Engineering Services – Qualification Based Selection (QBS). When DGS or MDOT solicits offers for architectural or engineering services, it evaluates each offeror’s technical proposal only. After determining the most qualified offeror, award is made to that offeror if the department and the offeror can negotiate a price that is fair, competitive, and reasonable.²⁵

²⁰ § 13-107.

²¹ § 13-108.

²² § 13-109.

²³ § 13-110

²⁴ § 13-111

²⁵ § 13-112

Master Contracting. Designated procurement units may qualify offerors in one or more categories of services, supplies, or commodities and allow agencies solicit just these “master contractors” with secondary competition solicitations to award specific projects (task orders).²⁶

BPW Approvals by Method:

FY 2021 awards²⁷:

Competitive Sealed Bid	Competitive Sealed Proposals	Sole Source	Emergency/ Expedited	Other
151	73	126	210	204

NOTABLE:

- The number of competitive sealed bid contract awards decreased in FY 2021 to the lowest annual amount in over a decade of reporting.
- The number of competitive sealed proposals contract awards decreased in FY 2021 to the lowest annual amount in over a decade of reporting.
- The number of sole-source contract awards increased in FY 2021 to the highest annual amount in over a decade of reporting.
- The number of emergency contract awards increased in FY 2021 to a record annual high, primarily due to the COVID-19 pandemic.
- The number of “other” contract awards increased in FY 2021 to a record annual high due to an increase in the amount of master contracting/task order awards, Architectural/Engineering awards, and other types of procurement methods.²⁸

Single Bids/Proposals and Encouraging Competition

FY 2021 Single Bid/Proposal Received ²⁹
48

- The number of contract awards resulting from a single bid or proposal increased in FY 2021 to the highest annual amount in eight years of reporting.³⁰

²⁶ § 13-113

²⁷ FY 2023 Managing For Results (MFR), Board of Public Works – FY 2021 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2023/Board-of-Public-Works-MFR.pdf

²⁸ FY 2018 Managing For Results (MFR), Board of Public Works – FY 2012 - FY 2016 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2018/BoardofPublicWorks.pdf

²⁹ FY 2023 Managing For Results (MFR), Board of Public Works – FY 2021 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2023/Board-of-Public-Works-MFR.pdf

³⁰ FY 2018 Managing For Results (MFR), Board of Public Works – FY 2012 - FY 2016 actual data. https://dbm.maryland.gov/Documents/MFR_documents/2018/BoardofPublicWorks.pdf

The Procurement Advisor and the Board’s General Counsel have worked with the Procurement Improvement 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 and including necessary information so that prospective bidders and offerors have a clear understanding of the anticipated scope of work.
- Advertising solicitations with ample time necessary for evaluations and award approvals to avoid unnecessary incumbent contract extensions.
- 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

³¹See generally §§ 14-101 – 14-110

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.

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

Minority Business Enterprise Program

- *Goal:* The Minority Business Enterprise Program (MBE) 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 2020:* The State made awards totaling \$971,103,132 to minority business enterprise prime contractors and subcontractors, which represents 14.14% of the agencies' total award dollars.³⁵ This is lower than the \$1,422,866,397 total in FY 2019 (17.88% of total FY 2019 awards).³⁶
- *FY 2021:* As of the date of this Procurement Advisor's Report the Governor's Office of Small, Minority & Women Business Affairs has not released its annual report for FY 2021 with the necessary MBE data to include in this report for FY 2021.

Veteran-owned Small Business Enterprise Program

- *Goal:* The Veteran-owned Small Business Enterprise Program (VSBE) requires procurement agencies to structure procurement procedures to try to achieve an overall minimum of 1% of the agency's total dollar value of procurement contracts to be made directly or indirectly with veteran-owned small business enterprises.³⁷
- *FY 2020:* The State made awards totaling \$31,319,690 to veteran-owned small business enterprise prime contractors and subcontractors, which represents 0.61% of the agencies' total award dollars.³⁸ This is lower than the \$34,036,988 total in FY 2019 (0.78% of total FY 2019 awards).³⁹
- *FY 2021:* As of the date of this Procurement Advisor's Report the Governor's Office of Small, Minority & Women Business Affairs has not released its annual report for FY 2021 with the necessary VSBE data to include in this report for FY 2021.

Small Business Reserve

- *Goal:* The Small Business Reserve (SBR) Program aims to increase participation in State procurements by small businesses by requiring agencies to structure their procurement procedures to ensure that a minimum amount of agencies'

³³ COMAR 21.11.05.07

³⁴ COMAR 21.11.03.01

³⁵ Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2020

https://gomdsmallbiz.maryland.gov/Reports/FY2020_Annual%20Report.pdf

³⁶ Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2019

https://gomdsmallbiz.maryland.gov/Reports/FY2019_Annual%20Report_GOSBA_Update.pdf

³⁷ § 14-602

³⁸ Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2019

https://gomdsmallbiz.maryland.gov/Reports/FY2019_Annual%20Report_GOSBA_Update.pdf

³⁹ Report to the Legislative Policy Committee on Veteran-Owned Small Business Participation FY2018

<https://bpw.maryland.gov/Publications/FY18-VSBE-Report.pdf>

procurement dollars are expended directly with certified small businesses. The SBR goal is 15% of all State procurement expenditures.⁴⁰

- *FY 2020*: The State made payments totaling \$124,068,949 to certified small businesses from designated SBR procurements, which represents 2.4% of the agencies' total award dollars.⁴¹ This is lower than the \$159,324,453 total in FY 2019 (3.41% of total FY 2018 spend).⁴²
- *FY 2021*: As of the date of this Procurement Advisor's Report the Governor's Office of Small, Minority & Women Business Affairs has not released its annual report for FY 2021 with the necessary SBR data to include in this report for FY 2021. In 2021, Governor Hogan issued Executive Order 01.01.2021.01, requiring, with some exceptions, procurements of contracts for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services with an anticipated dollar value between \$50,000 and \$500,000 to be designated as SBR procurements.

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.⁴³
- 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* Program. No State agencies reported significant contract awards in FY 2021 based on application of the preference. This pattern has been consistent over the last decade 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 more effective program for soliciting and awarding contracts to small businesses. With the expansion of 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*.⁴⁴

Green Purchasing

The Green Purchasing Committee provides information, assistance, and guidelines to maximize procurement of environmentally beneficial products and services

⁴⁰ Title 14, Subtitle 5 of the State Finance and Procurement Article

⁴¹ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2020*
https://gomdsmallbiz.maryland.gov/Reports/FY2020_Annual%20Report.pdf

⁴² *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2019*
https://gomdsmallbiz.maryland.gov/Reports/FY2019_Annual%20Report_GOSBA_Update.pdf

⁴³ Title 14, Subtitle 2 of the State Finance and Procurement Article

⁴⁴ https://bpw.maryland.gov/Publications/FY2017_Small-Business-Preference-Program.pdf

by State agencies.⁴⁵ State agencies annually report to the Department of General Services on the purchases of environmentally preferable products and services.⁴⁶

VII. PROCUREMENT ADVISOR ACTIVITIES

As Procurement Advisor, I report the following activities:⁴⁷

Committees and Organizations

- Member, Procurement Improvement Council
- Chair, Task Force to Study Cooperative Purchasing for Health Insurance
- Board representative, Senior Procurement Advisors Group
- MBE/VSBE/SBR Liaison, Board of Public Works
- Coordinator, Board of Public Works Managing for Results
- Instructor, Maryland Procurement Academy (MDPA)
- Member, National Association of State Procurement Officials (NASPO)
- Member, National Institute of Governmental Purchasing (NIGP)
- Member, Maryland Public Purchasing Association (MPPA)
- Certified Public Procurement Officer (CPPO)
- Certified Professional Public Buyer (CPPB)
- Certified Procurement Professional by the National Institute of Government Purchasing (NIGP-CPP)
- Member, Maryland Bar

Reports

- Annual report to General Assembly on Small Business Reserve Program
- Annual report to General Assembly on Payment of Employee Health Care Expenses
- Annual report to General Assembly on MBE Waivers

Regulations/Policy

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

Communication

- Regularly advise the General Assembly and Office of Legislative Audits
- Monitor Office of Legislative Audits reports and assist agencies with respect to procurement findings

⁴⁵ <https://dgs.maryland.gov/Pages/GreenPurchasing/index.aspx>

⁴⁶ https://dgs.maryland.gov/Pages/Publications/green_purchasing_annual_reports.aspx

⁴⁷ § 12-102(a)(2)(ix)

- Brief procurement officers from the state, universities, counties and public-school systems on procurement legislation and State procurement trends
- Brief the Maryland Public Purchasing Association on changes to procurement laws and regulations
- Advise the Senior Procurement Advisors Group on procurement best practices, procurement laws and regulations, and Board of Public Works policy
- Teach courses on Maryland Procurement Law for students within the Maryland Procurement Academy

VIII. RECENT CHANGES TO STATE PROCUREMENT

COVID-19 Pandemic: Emergency Procurements and Impacts to State Procurement

The COVID-19 pandemic, starting in FY20 and continuing through FY21, has impacted state procurement in several significant ways. Reviewing the statistics provided on page 10 of this report, FY21 saw the number of reported emergency procurements increase to a record annual high. During the same time period the number of competitive sealed bidding and competitive sealed proposals procurements both decreased to the lowest annual amounts in over a decade of reporting. The number of sole source contracts increased to the highest annual amount in over a decade of reporting, while the number of competitive procurements with a single bid/proposal increased to the highest annual amount in eight years of reporting.⁴⁸ The increased number of single bid/proposal awards could be due to a number of factors, including fewer available state resources to attempt to reprocur due to the demands placed on agency procurement officers to procure COVID-related services and supplies instead. In addition, some vendors may have been unable to bid or chosen not to bid because of their own limited resources due to worker health issues, resignations/retirements, or other COVID-related reasons. Finally, several of the new reported “sole source” contracts were in fact retroactive extensions of prior contracts, some of which had been competitively procured previously, that had expired for failure to competitively reprocur in time or to extend the contract via normal means, such as the exercising of a renewal option or extending the contract via a contract modification agreement before the contract expired.

These statistics paint a picture of reduced competition in state procurements due to an increased reliance on emergency and sole source contracting during the reporting period.⁴⁹ With many of these contracts funded by Federal COVID relief dollars and continuing into FY22, it has been a challenge to “wean” agencies off of the use of the

⁴⁸ Note that while many reported emergency procurement awards were based on a single bid/proposal or a “sole source” justification, those emergency procurements did not count toward the sole source and single bid/proposal statistics included in this report as the emergency procurement method is separate and distinct from the sole source and competitive sealed bidding/proposals procurement methods.

⁴⁹ The State of Maryland is not alone in experiencing reduced competition during the COVID-19 pandemic: <https://www.npr.org/2020/06/09/869052415/feds-spend-billions-on-covid-19-contracts-often-without-fully-competitive-biddin>

emergency and sole source procurement methods that so many procurement officers became accustomed to utilizing during FY20-FY21. In addition, numerous emergency procurement reports were reported late during this period (i.e., after the mandated reporting period of time required by regulation), resulting in some emergency procurement activity not being reviewed by the Board of Public Works until months after the emergency contract awards were made. On a positive note, the number of COVID-related emergency procurements reported to the Board of Public Works has begun to taper off in the second half of FY22, to be reflected in next year's report.

The COVID pandemic has also had an impact on the state's procurement workforce. Agencies have lost staff and productivity temporarily due to personnel sickness and leave, as well as permanently due to planned and early retirements along with staff resigning and leaving for other, non-state employment (the last being a continuing issue over several past years). There is a significant concern that with the recent and continuing retirements, resignations, and staff turnover in general, the state has experienced and will continue to experience a "brain drain" of experienced procurement professionals exacerbated by a "silver tsunami" of retiring baby boomers that has been predicted for years.⁵⁰ The state should consider investigating and developing new and different systems to retain and transfer accumulated agency knowledge and experience to younger staff entering the state procurement workforce during these changing times.⁵¹

The majority of the following, additional "recent changes" have been included in prior State Procurement Reports but are repeated here for informational purposes and historical perspective.

Procurement Reform

The 2017 legislative session included several bills to reform the State's procurement system based on recommendations made in a series of reports reviewing state procurement.⁵² Notable bills from that session and a summary of the changes to the procurement code included:

⁵⁰ <https://www.governing.com/archive/gov-governments-silver-tsunami.html>
<https://thehill.com/opinion/finance/381023-cyber-boomers-and-pensions-oh-my-state-governments-3-worries>
<https://www.npr.org/2015/01/15/377201540/businesses-try-to-stave-off-brain-drain-as-boomers-retire>
<https://www.forbes.com/sites/jackkelly/2021/10/01/baby-boomers-are-leaving-the-workforce-to-live-their-best-lives-in-a-silver-tsunami-great-retirement-trend/?sh=4ca52432260b>

⁵¹ <https://federalnewsnetwork.com/retirement/2021/10/could-ai-help-stave-off-the-brain-drain-of-federal-retirement/>

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>;

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>;

- *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, including establishing a 15% goal for all agencies.
 - 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 removal 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.
 - 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

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>;

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

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 starting in the summer of 2019. Branded as “eMaryland Marketplace Advantage” (eMMA), additional updates to the system were made during FY 2021 with the eventual end goal being a complete procure-to-pay eProcurement system.

Procurement Manual

Recommendation 4.2 of the Report of the Commission to Modernize State Procurement (2016) 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 to be used in the development of a Maryland Procurement Training Curriculum (Recommendation 4.3 of the Report of the Commission to Modernize State Procurement – see below).

The Procurement Manual has been completed and published on the State’s main procurement portal webpage.⁵³ Continued development and use of this manual should provide consistency in procurement practices across all State agencies.

Procurement Academy

Recommendation 4.3 of the Report of the Commission to Modernize State Procurement advised that a Maryland Procurement Training Curriculum is to be developed from the Maryland Procurement Manual to train all procurement staff on the standardized best practices and COMAR interpretations for conducting procurements. Training content is to be tailored for classroom settings as well as online self-training modules, with the establishment of full-time centralized staff devoted to delivering training to State procurement staff. Online training modules are to be established with delivery via the State’s centralized procurement website portal. Periodic hands-on training sessions are to be provided on various subject matter areas, and the Senior Procurement Advisory Group is to continue to provide training sessions based upon established curriculum. Updates to the training curriculum are to be made on an ongoing basis as updates are made to the Procurement Manual.

In response to this recommendation, the Department of General Services Office of State Procurement (DGS-OSP) has created the Maryland Procurement Academy (the Academy). The Academy comprises full-time staff, including a Chief Learning Officer, as well as a learning management system (LMS) for instructors and students to utilize to

⁵³ *Maryland Procurement Manual* <https://procurement.maryland.gov/maryland-procurement-manual-1-introduction-and-general-overview/>

access numerous courses and relevant training materials. Courses cover a wide variety of procurement subject matter including Maryland procurement law, eProcurement, solicitation construction, evaluation of bids and proposals, and contract administration and management. Students that complete the curriculum and pass the certification exam receive the designation of Certified Maryland Procurement Officer (CMPO).⁵⁴

As of January 1, 2022, 198 state employees in procurement-focused positions have participated in the Academy's training groups, with 171 passing the certification exam. A new training group of 36 candidates will begin the training in early 2022. The Academy is also working on identifying state employees that work in positions related to procurement so that those employees can receive additional training in their procurement-related duties.

IX. LOOKING FORWARD

Recommendation to Improve MBE Vendor Participation and Compliance

In response to concerns raised within the 2020 Joint Chairmen's Report regarding low levels of MBE participation rates,⁵⁵ the BPW provided the following recommendation to include within the formal response from the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA):

The Board of Public Works shares the budget committees' concerns regarding Minority Business Enterprise (MBE) participation rates and looks forward to ongoing work with GOSBA in order to help improve vendor participation in the MBE program and overall compliance with the State's MBE goal.

Through the coordinated efforts of BPW and GOSBA staff, recent changes to the MBE program's regulations have allowed for the waiving or curing of minor irregularities in vendor MBE affidavits submitted with procurement bid responses. Previously, bidders and their proposed MBE subcontractors were rejected outright for even trivial errors on their submitted MBE affidavits. The recent significant changes to the MBE regulations have resulted in fewer bidders and their proposed MBEs being rejected during the bid review process, directly impacting participation in the MBE program for the better.

In addition, the Procurement Advisor to the BPW continues to enhance communication between State units and the vendor community on procurement matters, including policies and procedures, vendor grievances, and MBE issues. The Board of Public Works Procurement Advisor has participated in several

⁵⁴ https://procurement.maryland.gov/wp-content/uploads/sites/12/2021/02/CMPO_Certification_Objectives_Program_Launch.pdf

⁵⁵ *Joint Chairmen's Report on the Fiscal 2021 State Operating Budget (SB 190) and the State Capital Budget (SB 191) and Related Recommendations*, 23-24.
<https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2020rs-budget-docs-jcr.pdf>

conferences and workshops coordinated by GOSBA to increase awareness of and vendor participation in the State's MBE program.

While many state contracts include MBE goals close to the State's goal of 29%, too few prime contractors meet or exceed their agreed-to contract MBE participation goals. Therefore, in the next annual Procurement Advisor's Report, the Procurement Advisor plans to propose that agencies use additional tracking measures designed to catch declining MBE participation rates in State contracts, notify prime contractors of declining MBE participation, and alert State agencies to take action to rectify declining MBE participation before contracts expire. This proposal would require agencies to set periodic milestones across the entire term of a contract for which to check the status of contractor MBE participation at each set milestone. If MBE participation is below the contractor's MBE commitment at that point in time, the contractor would be notified and warned to take action to increase participation. If the MBE participation was below a specific percentage threshold, the agency would be advised to take action as permissible under the law, including potentially assessing liquidated damages against the prime contractor, contemplating the addition of MBE subcontractors to the contract to increase participation, or possibly terminating the contract due to the contractor's failure to meet its MBE commitment.

Going forward, the BPW will continue serve as a resource for GOSBA as the agency examines procurement practices that affect small, minority, and women business enterprises and identifies policies that would improve small, minority, and women business enterprise participation rates.

The following recommendation was included in the Fiscal Year 2020 State Procurement Report and is reiterated in this report:

Expanding further, the Procurement Advisor recommends that GOSBA coordinate discussions with state procurement units to develop a system of setting contract milestones for contracts with MBE goals in order to track and improve MBE participation. These initial discussions could be initiated through the Procurement Improvement Council (PIC) and the Senior Procurement Advisory Group (SPAG), and the actual development of contract MBE participation milestones could take place during the Procurement Review Group (PRG) process during which the actual MBE goals are established.

As the duration and scope of work in each contract varies, a one-size-fits-all approach to setting milestones will likely not work. While some contracts may be able to include regular periodic milestones, such as once every six or 12 months in a multi-year services contract, other contracts may only include MBE participation opportunities during specific stages of the contract (ex. not during early development/transition phases, or only during actual construction and post-development phases). Therefore, it would be dependent upon the procuring agency to match the series of MBE participation check

milestones with the various phases of the contract's scope of work, for the entire life of the contract.

Once a set of milestones is established for a contract, the contracting agency would be required to report to GOSBA the current MBE participation at the time of each milestone. If the MBE participation is beneath the contractor's stated commitment or not within a set percentage threshold of that commitment as determined by GOSBA, then GOSBA would direct the contracting agency to take action to improve the MBE participation if the agency has not already done so.

As stated above, there are several available tools to help improve low MBE participation before contracts expire, and additional measures may be permissible depending on the terms of the contract. Correcting low MBE percentage has not always been a high priority in contract management, and so agencies should be directed to take a firmer approach with contractors when MBE participation is lacking. Each contractor has made a commitment to a specific percentage of MBE participation when it submitted its bid/proposal and signed the state contract. Therefore, each contractor should be held accountable to the commitments it has made as with any other contract provision.

Conclusion

The Board of Public Works looks forward to working with the General Assembly and procuring agencies to identify additional best practices for State procurement, 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 2021 Summary

Categories of Work	Contract Awards and Change Orders Total - State Agencies other than MDOT	Contract Awards and Change Orders Total - MDOT
<i>Commodities, Supplies, and Equipment</i>	\$417,798,820.77	\$61,581,753.85
<i>Services</i>	\$3,351,204,312.28	\$268,296,724.50
<i>Architect and Engineering</i>	\$60,070,051.30	\$401,234,146.66
<i>Human, Cultural, Social and Educational Services</i>	\$515,766,145.51	\$0.00
<i>IT Services</i>	\$740,160,714.39	\$105,167,941.47
<i>IT Hardware</i>	\$53,487,824.03	\$3,379,382.12
<i>IT Software</i>	-\$195,243,938.37)	\$26,949,031.10
<i>Construction</i>	\$720,276,291.90	\$983,572,114.49
<i>Construction-Related Services</i>	\$1,531,376.84	\$15,615,559.27
<i>Capital Equipment</i>	\$2,333.62	-\$3,044.00)
<i>Maintenance</i>	\$17,390,774.32	\$349,147,659.04
<i>Maintenance-Functional</i>	\$67,406,052.86	\$0.00
<i>Maintenance-Construction</i>	-\$6,608.68)	\$0.00
<i>Energy Performance</i>	\$4,607,891.24	\$0.00
<i>Revenue</i>	\$8,082,004.67	\$0.00
<i>Leases</i>	\$18,545,857.35	\$0.00
Totals	\$5,781,079,904.03	\$2,214,941,268.50