

STATE OF MARYLAND
Board of Public Works

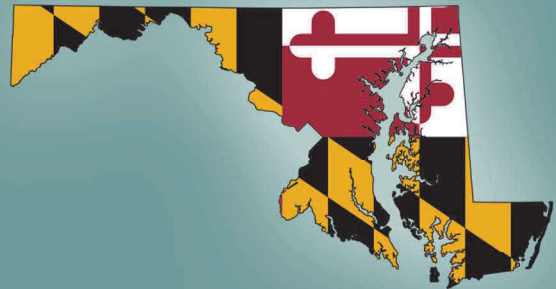
GOVERNOR • TREASURER • COMPTROLLER

PROCUREMENT ADVISOR'S REPORT

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Fiscal Year 2022

Table of Contents

I. SCOPE OF THE REPORT	2
II. MAGNITUDE OF STATE PROCUREMENT IN FISCAL YEAR 2022	2
III. STATE PROCUREMENT PURPOSES AND POLICIES	3
IV. OVERVIEW OF STATE PROCUREMENT ORGANIZATION	3
V. PROCUREMENT METHODS	9
VI. SOCIOECONOMIC PROGRAMS AND SPECIAL PROVISIONS.....	12
VII. PROCUREMENT ADVISOR ACTIVITIES	20
VIII. RECENT CHANGES TO STATE PROCUREMENT.....	21
IX. LOOKING FORWARD	24
APPENDIX.....	27

I. SCOPE OF THE REPORT

This is the Fiscal Year 2022 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 2022

In fiscal year 2022 the State procured over \$15.9 billion in goods and services which was a 99.3% increase from FY 2021.³ 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 \$11.65 billion in contract awards, contract modifications, and contract renewal options.⁴ The Board-approved total does include State University and College contracts but does not include all entries into the Statewide and Department of Transportation’s Advanced Purchase Inventory Control Systems (ADPICS), so the State total and Board of Public Works approved totals are not directly comparable.

	FY22 Submitted⁵	FY22 Approved	Disapproved/ Deferred	Total Dollars (billions)
Contracts	758	732	1	\$4.87
Modifications	212	201	1	\$1.92
Renewal Options	86	85	1	\$4.86

Totals represent contract award, renewal option, 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)(6), 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)(ix).

³ The FY 2021 total was \$7.996 billion. Source: Statewide and MDOT Advanced Purchase Inventory Control System (ADPICS).

⁴ FY 2024 Managing For Results (MFR), Board of Public Works – FY 2022 actual data.

⁵ “Submitted” items include some items published on the BPW meeting agenda that are withdrawn prior to being voted upon.

III. STATE PROCUREMENT PURPOSES AND POLICIES

The General Assembly has articulated the State Procurement Law's purposes and policies as follows:⁶

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 Title 21); sets procurement policy; and establishes internal operating procedures. Board operations are directed by the Executive Secretary⁷ with the Board's Procurement Advisor and General Counsel serving statutorily delineated duties.⁸

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."⁹ 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).

⁷ § 10-201.

⁸ § 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).

⁹ 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.¹⁰ Exemption also means further decentralization of the State’s procurement process.¹¹ 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.¹²

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.¹³

Procurement Improvement Council: The Procurement Improvement Council (PIC), chaired by the Chief Procurement Officer of the Department of General Services, is comprised of the Secretaries of Transportation, Information Technology, Juvenile Services, Human Services, and Health; the State Treasurer; the Special Secretary of the Office of Small, Minority, and Women Business Affairs; the Chancellor of the University System of Maryland; the Procurement Advisor of the Board of Public Works; the State Superintendent of Schools; a representative of local government with expertise in local procurement matter; two representatives of social service providers in the State; a representative of a minority-, women-, or veteran-owned business; three members of the general public appointed by the presiding officers of the General Assembly; a member of the Senate; and a member of the House of Delegates.

During FY 2022 the PIC 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 matters; providing a forum for discussion of specific procurement issues and problems that arise; making recommendations to the Board for improving the procurement process; reviewing existing procurement regulations; and advising the General Assembly on proposed legislation.¹⁴

¹⁰ § 11-203. Most exempt agencies are required to follow MBE laws and a few other general requirements.

¹¹ 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.

¹² § 12-202.

¹³ § 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).

¹⁴ § 12-105.

Primary Procurement Units: During FY 2022 four primary procurement units, subject to the authority of the Board of Public Works, had jurisdiction over State procurement as follows:¹⁵

State Treasurer may engage in or control procurement of:

- Banking;
- Financial services;
- Insurance; and
- Insurance services.

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

- Real property leases;
- 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, cloud computing equipment, and associated services;
- Information technology system modernization;
- Telecommunications equipment, systems, or services; and
- Cybersecurity upgrades and modernization.

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; and
- 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.

¹⁵ § 12-107.

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;¹⁶ 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 2022 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, secondary competition awards, renewal options, and modifications in accordance with COMAR 21.05.13.06, 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, 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;

¹⁶ COMAR 21.02.01.04.

- \$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;
- Supplies and services for aeronautics-related activities; and
- Secondary competition awards, renewal options, and modifications in accordance with COMAR 21.05.13.06 in the amount of \$200,000 or less.

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.¹⁷

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

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.¹⁹

Noncompetitive Negotiated Procurement. Restricted to certain human, social, or educational services, allowing awards based on “the best interests of the State.”²⁰

Sole Source. The sole source procurement method may be used if only one source for the goods or services is available.²¹

Emergency. Award may be made by any method that the procurement officer determines appropriate to meet an occurrence or condition that creates an immediate and serious need for services, materials, or supplies. Emergency awards are within a procurement agency’s authority: the procurement agency may award a contract limited to the quantity and types of items necessary to avoid or mitigate serious damage to public health, safety, or welfare without Board of Public Works approval. After award, the agency is required to report the procurement to the Board.²²

Expedited. Previously restricted to just the Maryland Aviation Administration (MAA) and the Maryland Port Commission, now all procurement agencies 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

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

¹⁸ §§ 13-104, 13-105.

¹⁹ COMAR 21.05.04.01.

²⁰ § 13-106.

²¹ § 13-107.

²² § 13-108(a)-(c).

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. Procurement agencies must seek Board of Public Works approval before soliciting an expedited procurement.²³

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).²⁴

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

Auction Bids. Previously restricted to only procurements for supplies estimated at \$1 million or more, now all primary procurement units may use auction bidding to procure supplies and services in any amount. Similar to the competitive sealed bidding procurement method, when the auction is complete, award is made based on lowest bid price or lowest evaluated bid price.²⁶

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.²⁷

Pay-for-Success Contracting. A performance-based procurement method through which an agency contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of specific outcomes. With an emphasis on environmental outcomes, this method is limited to the Departments of Agriculture, Environment, Natural Resources, Transportation, and General Services, as well as the Maryland Environmental Service.²⁸

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).²⁹

²³ § 13-108(d)-(f).

²⁴ § 13-109.

²⁵ § 13-110

²⁶ § 13-111

²⁷ § 13-112

²⁸ § 13-112.1

²⁹ § 13-113

BPW Approvals by Procurement Method:

FY 2022 awards³⁰:

Competitive Sealed Bid	Competitive Sealed Proposals	Sole Source	Emergency/ Expedited	Other³¹
191	97	179	104	161

NOTABLE:

- The number of competitive sealed bid contract awards increased in FY 2022 from FY 2021’s lowest annual amount in over a decade of reporting (151 in FY 2021).
- The number of competitive sealed proposals contract awards increased in FY 2022 from FY 2021’s lowest annual amount in over a decade of reporting (73 in FY 2021).
- The number of sole-source contract awards significantly increased in FY 2022 to the highest annual amount in over a decade of reporting (126 in FY 2021).
- The number of emergency/expedited contract awards decreased in FY 2022 from a record annual high in FY 2021 that was primarily attributed to the COVID-19 pandemic (210 in FY 2021).
- The number of “other” contract awards decreased in FY 2022 from a record annual high in FY 2021 (204 in FY 2021).³²

Single Bids/Proposals and Encouraging Competition

FY 2022 Single Bid/Proposal Received³³
57

- The number of contract awards resulting from a single bid or proposal increased in FY 2022 to the highest annual amount in eight years of reporting (48 in FY 2021).³⁴

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:

³⁰ FY 2024 Managing For Results (MFR), Board of Public Works – FY 2022 actual data.

³¹ The “Other” category includes A/E procurements, intergovernmental cooperative purchasing agreements, negotiated awards after unsatisfactory competitive sealed bidding, noncompetitive negotiated procurements, and master contracts.

³² 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

³³ FY 2024 Managing For Results (MFR), Board of Public Works – FY 2022 actual data.

³⁴ 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

- 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 AND SPECIAL PROVISIONS

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. In addition, several other procurement laws restrict or limit certain purchases or set minimum standards on specific State procurement actions. In order of statutory organization, these programs and provisions are as follow:

Preferences to Benefit Disadvantaged Individuals - 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.³⁵ These entities are referred to as preferred providers. They are, in order of preference:

- (1) Maryland Correctional Enterprises³⁶
- (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

³⁵§§ 14-101 – 14-110

³⁶MCE 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.³⁷

Small Business Preference Program

- *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, as well as the Department of Public Safety and Correctional Services in connection with construction of a State correctional facility.³⁸
- The expansion, use, and popularity of the Small Business *Reserve* Program has led to the diminished use and efficaciousness of the Small Business *Preference* Program. No State agencies reported significant contract awards in FY 2022 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*.³⁹

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.⁴⁰
- *FY 2021:* The State made awards totaling \$1,131,066,978 to minority business enterprise prime contractors and subcontractors, which represents 17.24% of the agencies' total award dollars.⁴¹ This is higher than the \$971,103,132 total in FY 2020 (14.14% of total FY 2020 awards).⁴²
- *FY 2022:* 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 2022 with the necessary MBE data to include in this report for FY 2022.

³⁷ COMAR 21.11.05.07

³⁸ §§ 14-201 – 14-207.

³⁹ https://bpw.maryland.gov/Publications/FY2017_Small-Business-Preference-Program.pdf

⁴⁰ §§ 14-301 – 14-309; COMAR 21.11.03.

⁴¹ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2021*

https://gomdsmallbiz.maryland.gov/Reports/GOSBA_Annual%20Report_FY2021.pdf

⁴² *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2020*

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

Reciprocal Preference for Resident Bidders

A procurement agency may give a preference to a resident business if:

- (1) The resident business is a responsible
 - a. Bidder under competitive sealed bidding;
 - b. Offeror under competitive sealed proposals; or
 - c. Provider of architectural or engineering services;
- (2) A responsible bidder or offeror whose principal office or principal base of operations is in another state submits the lowest responsive bid or the most advantageous offer;
- (3) The state in which the nonresident's principal office is located or the state in which the nonresident has its principal operation through which it would provide the goods or services gives a preference to its residents through law, policy, or practice; and
- (4) The preference does not conflict with a federal law or grant affecting the procurement contract.⁴³

Paper Procurement by Department of General Services

Of the total volume of paper that the Secretary of General Services buys, at least 90 percent shall be recycled paper.⁴⁴

Low Noise Supplies

All units of State government shall acquire by purchase or lease, to the greatest extent practicable, the quietest available supplies.⁴⁵

Coal in Heating Systems

The design of a heating system in a building or facility constructed after July 1, 1986 may not preclude the use of Maryland coal if the State provides at least 50% of the money used for construction of the building or facility, and a determination is made that coal products will be used to fuel the heating system.⁴⁶

Percentage Price Preference for Environmentally Preferable Products or Services – Maryland Green Purchasing Committee

The Maryland Green Purchasing Committee provides information, assistance, and guidelines to maximize procurement of environmentally beneficial products and services by State agencies, including establishing environmentally preferable specifications to be adopted by State agencies.⁴⁷ State agencies annually report to the Department of General Services on the purchases of environmentally preferable products and services.⁴⁸

⁴³ §§ 14-401 – 14-401.1.

⁴⁴ § 14-402.

⁴⁵ § 14-403.

⁴⁶ § 14-404.

⁴⁷ § 14-405; § 14-410; see also <https://dgs.maryland.gov/Pages/GreenPurchasing/index.aspx>

⁴⁸ https://dgs.maryland.gov/Pages/Publications/green_purchasing_annual_reports.aspx

Preference for Mercury Free Products and Equipment

All procurement agencies shall give a preference to procuring products and equipment that are mercury-free. If mercury-free products and equipment that meet the agency's product performance requirements are not commercially available, the procurement agency shall give preference to products containing the least amount of mercury necessary to meet performance requirements.⁴⁹

Percentage Price Preference for Locally Grown Foods

State schools and facilities shall include in procurement solicitations a price preference not exceeding five percent to bids or proposals for locally grown foods.⁵⁰

State Fleet Biodiesel Fuel or Other Approved Biofuel Usage

The State shall ensure that at least 50% of the heavy equipment owned by the state using diesel fuel and at least 50% of the vehicles using diesel fuel in the State vehicle fleet use a blend of fuel that is at least 5% biodiesel fuel or other biofuel approved by the U.S. Environmental Protection Agency as a fuel or fuel additive or approved under the EPA Renewable Fuels Standard 2 program.⁵¹

Use of Compost in Public Lands of the State

A State or local unit responsible for the maintenance of public lands in the State, to the maximum extent practicable, shall give preference to the use of compost in any land maintenance activity that is publicly funded.⁵²

Employee Uniforms and Equipment – Place of Manufacture

With limited exceptions, a public employer may not knowingly buy, furnish, or require an employee to buy or acquire for use while on duty any of the following items unless the item is manufacture in the United States:

- (1) A uniform or any other item of apparel, the selection of which is not in the employee's discretion, except for the proper size; or
- (2) Safety equipment and protective accessories.⁵³

Energy Efficient Outdoor Lighting Fixtures in State Buildings

If State funds are used to install or replace a permanent outdoor luminaire for lighting on the grounds of any building or facility owned or leased by the State or a unit of the State, procurement specifications shall require that:

- (1) Design of the luminaire maximizes energy conservation and minimizes light pollution, glare, and light trespass;
- (2) Illumination produced by the luminaire is the minimum illumination necessary for the intended purpose of the lighting; and
- (3) For a luminaire with an output of more than 1,800 lumens, the luminaire is a restricted upright luminaire.⁵⁴

⁴⁹ § 14-406.

⁵⁰ § 14-407.

⁵¹ § 14-408.

⁵² § 14-409.

⁵³ § 14-411.

Disclosure of Conflict Minerals Originated in Democratic Republic of Congo Required

Bidders and offerors for supplies and services contracts are required to disclose certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.⁵⁵

Purchasing Electronic Products

When purchasing an electronic product to be used by the State, a procurement agency shall purchase an electronic product that:

- (1) Is listed and rated silver or gold on the Electronic Product Environmental Assessment Tool (EPEAT) registry; or
- (2) Meets nationally-recognized and consensus-based standards established by a comprehensive environmental rating system approved by the Department of Information Technology.⁵⁶

Recycling Electronic Products

When awarding a procurement contract for services to recycle electronic products, a State unit shall award the contract to a recycler of electronic products that:

- (1) Is R2 or e-Stewards certified; or
- (2) Meets nationally recognized and consensus-based guidelines, standards, and systems for recycling that are approved by the Department of the Environment in consultation with the Department of General Services.⁵⁷

Purchase of American Manufactured Goods

With limited exceptions, a public body shall require a contractor or subcontractor to use or supply American manufactured goods in the performance of a contract for:

- (1) Constructing or maintaining a public work; or
- (2) Buying or manufacturing machinery or equipment that is to be installed at a public work site.⁵⁸

Prohibition of Use of State Funds for Invasive Plant Species

With limited exceptions, State funds may not be used to purchase or plant an invasive plant species for an outdoor project.⁵⁹

Zero-Emission Vehicles

State law provides for increasing requirements over time to eventually require 100% of passenger cars in the State vehicle fleet to be zero-emission vehicles by 2031, and other light-duty vehicles in the State vehicle fleet to be zero-emission vehicles by 2036.⁶⁰

⁵⁴ § 14-412.

⁵⁵ § 14-413.

⁵⁶ § 14-414.

⁵⁷ § 14-415.

⁵⁸ § 14-416.

⁵⁹ § 14-417.

⁶⁰ § 14-418.

Small Business Reserve Program

- *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' procurement dollars are expended directly with certified small businesses. The SBR goal is 15% of all State procurement expenditures. The SBR program has been expanded in recent years to include all state agencies and a greater number of eligible procurements.⁶¹
- *FY 2021:* The State made payments totaling \$127,306,450 to certified small businesses from designated SBR procurements, which represents 2.9% of the agencies' total award dollars.⁶² This is higher than the \$124,068,949 total in FY 2020 (2.4% of total FY 2020 spend).⁶³
- *FY 2022:* 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 2022 with the necessary SBR data to include in this report for FY 2021.

Veteran-Owned Small Business Enterprise Participation

- *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.⁶⁴
- *FY 2021:* The State made awards totaling \$29,570,187 to veteran-owned small business enterprise prime contractors and subcontractors, which represents 0.60% of the agencies' total award dollars.⁶⁵ This is lower than the \$31,319,690 total in FY 2020 (0.61% of total FY 2019 awards).⁶⁶
- *FY 2022:* 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 2022 with the necessary VSBE data to include in this report for FY 2022.

⁶¹ §§ 14-501 – 14-505.

⁶² *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2021*
https://gomdsmallbiz.maryland.gov/Reports/GOSBA_Annual%20Report_FY2021.pdf

⁶³ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2020*
https://gomdsmallbiz.maryland.gov/Reports/FY2020_Annual%20Report.pdf

⁶⁴ §§ 14-601 – 14-606.

⁶⁵ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2021*
https://gomdsmallbiz.maryland.gov/Reports/GOSBA_Annual%20Report_FY2021.pdf

⁶⁶ *Governor's Office of Small, Minority & Women Business Affairs Annual Report FY2020*
https://gomdsmallbiz.maryland.gov/Reports/FY2020_Annual%20Report.pdf

Certified Local Farm Enterprise Program

Encourages each procurement unit to try to achieve an overall percentage goal of 20% of the unit’s total dollar value of procurement contracts for food from certified local farm enterprises.⁶⁷

Security for Construction Contracts

Before a public body awards a construction contract exceeding \$100,000, the contractor shall provide payment security that meets the requirements of the procurement law.⁶⁸

Prevailing Wage Rates – Public Work Contracts

With limited exceptions, each contractor and subcontractor under a public work contract shall pay not less than the prevailing wage rate of straight time to an employee for each hour that the employee works.⁶⁹

Steel Procurement for Public Works

With limited exceptions, a public body shall require a contractor or subcontractor to use or supply only American steel products in the performance of a contract for:

- (1) Constructing or maintaining a public work; or
- (2) Buying or manufacturing machinery or equipment that:
 - a. Is composed of at least 10,000 pounds of steel products; and
 - b. Is to be installed at a public work site.⁷⁰

Notice of Political Contributions

Each State or local government procurement contract shall include a clause covering the obligation of a contractor to comply with the political contribution reporting requirements under Title 14 of the Election Law Article to which the contractor may be subject.⁷¹

eMaryland Marketplace – Use by Certain Persons

Notice of a procurement and notice of a procurement award valued more than \$50,000 are required to be published in eMaryland Marketplace by a unit of State government; a county; a municipality; a bicounty or multicounty governmental agency; a special tax district, sanitary district, drainage district, soil conservation district, and water supply district; a public institution of higher education; a public school; and an entity exempt from the provisions of the General Procurement Law under State Finance and Procurement Article § 11-203, except for the Maryland Health and Higher Educational Facilities Authority.⁷²

⁶⁷ §§ 14-701 – 14-708.

⁶⁸ §§ 17-101 – 17-111.

⁶⁹ §§ 17-201 – 17-226.

⁷⁰ §§ 17-301 – 17-306.

⁷¹ §§ 17-401 – 17-402.

⁷² §§ 17-501 – 17-502.

Apprenticeship Requirements for Public Works Contracts

A contractor that is awarded a procurement contract for a project covered under this law shall provide to the procuring unit, as a condition of receiving the contract, written verification that:

- (1) The contractor participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project;
- (2) The contractor will make payments to the State Apprenticeship Training Fund; or
- (3) The contractor will payments in amounts determined under the law to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.⁷³

Investment Activities in Iran

A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on the list created and maintained by the Board of Public Works as a person engaging in investment activities in Iran is ineligible to, and may not bid on, submit a proposal for, or enter in or renew a contract with a public body for goods or services.⁷⁴

Responsible Payment of Employee Health Care Expenses

Each bidder, contractor, or subcontractor that performs work on a State-funded construction project shall certify that the bidder, contractor, or subcontractor pays employee health care expenses in accordance with the law.⁷⁵

Living Wage

With limited exceptions, contractor employees working on certain State contracts for services or maintenance must be paid a minimum rate meeting or exceeding the Living Wage rate Tier for the area where most of the work is to take place. Tier 1 includes Montgomery County, Prince George's County, Howard County, Anne Arundel County, Baltimore County, and Baltimore City. Tier 2 includes any county in the State not included in Tier 1.⁷⁶

Commercial Nondiscrimination Policy

It is the policy of the State not to enter into a contract with any business entity that has discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners.⁷⁷

⁷³ §§ 17-601 – 17-606; see also §§ 17-6A-01 – 17-6A-06 – Apprenticeship Requirements for Capital Construction Projects.

⁷⁴ §§ 17-701 – 17-707.

⁷⁵ §§ 17-801 – 17-804.

⁷⁶ §§ 18-101 – 18-109.

⁷⁷ §§ 19-101 – 19-120.

VII. PROCUREMENT ADVISOR ACTIVITIES

As Procurement Advisor, I report the following activities:⁷⁸

Committees and Organizations

- Member, Procurement Improvement Council
- 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
- 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

⁷⁸ § 12-102(a)(2)(ix)

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 FY22, has impacted state procurement in several significant ways. Fiscal Year 2021 saw the number of reported emergency procurements increase to a record annual high, and only beginning to taper off in FY22. 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.⁷⁹ The increased number of single bid/proposal awards could be due to a number of factors, including fewer available state resources to attempt to reprocure 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 reprocure 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.⁸⁰ 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 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 tapered off in the second half of FY22.

The COVID pandemic has also had an impact on the state’s procurement workforce. Agencies have lost staff and productivity temporarily due to personnel

⁷⁹ 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.

⁸⁰ The State of Maryland was 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-bidding>

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.⁸¹ 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.⁸²

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.⁸³ 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.

⁸¹ <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>

⁸² <https://federalnewsnetwork.com/retirement/2021/10/could-ai-help-stave-off-the-brain-drain-of-federal-retirement/>

⁸³ *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>;

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/ltgovernor/wp-content/uploads/sites/2/2016/12/Commission-to-Modernize-State-Procurement-Final-Report-web.pdf>

- 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 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 2022 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.⁸⁴ 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 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 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).⁸⁵

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,⁸⁶ the BPW provided the following

⁸⁴ *Maryland Procurement Manual* <https://procurement.maryland.gov/maryland-procurement-manual-1-introduction-and-general-overview/>

⁸⁵ https://procurement.maryland.gov/wp-content/uploads/sites/12/2021/02/CMPO_Certification_Objectives_Program_Launch.pdf

⁸⁶ *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>

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 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 2022 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>	\$543,309,807.97	\$269,238,331.79
<i>Services</i>	\$8,675,793,495.97	\$1,035,555,792.03
<i>Architect and Engineering</i>	\$68,304,511.51	\$300,360,701.65
<i>Human, Cultural, Social and Educational Services</i>	\$875,288,743.63	\$0.00
<i>IT Services</i>	\$1,058,174,696.99	\$143,217,117.92
<i>IT Hardware</i>	\$32,965,069.96	\$9,231,150.57
<i>IT Software</i>	\$286,561,460.51	\$29,079,567.21
<i>Construction</i>	\$622,238,845.48	\$1,447,314,836.57
<i>Construction-Related Services</i>	\$3,255,721.87	\$17,666,965.00
<i>Capital Equipment</i>	\$525.00	\$660,708.00
<i>Maintenance</i>	\$15,580,278.36	\$323,822,007.05
<i>Maintenance-Functional</i>	\$39,313,255.15	\$0.00
<i>Maintenance-Construction</i>	\$45,513.22	\$0.00
<i>Energy Performance</i>	\$4,602,565.96	\$0.00
<i>Revenue</i>	\$125,541,969.13	\$0.00
<i>Leases</i>	\$7,995,429.12	-\$2,810.00
Totals	\$12,358,971,889.83	\$3,576,144,367.79