Procurement Reform Act of 2025

Objectives

DGS OSP conducted a comprehensive survey to gather stakeholder feedback on procurement operations. Stakeholders include other State agencies, the vendor community, socioeconomic business representation firms, and advocacy groups. OSP combined this foundational stakeholder input with directives from the Moore-Miller State Plan, to develop seven legislative packages designed to achieve key objectives:

1. **Modernize and Streamline Procurement:** Enhance and simplify procurement processes to improve the State's efficiency and responsiveness through a faster procurement timeline, contract modification authority, and simplification of the Small Business Reserve criteria.

2. **Promote Equity:** Strengthen and clarify liquidated damages and other enforcement tools to increase opportunities for socially and economically disadvantaged groups, including small, minority, women, and veteran-owned businesses.

3. **Consolidate Socioeconomic Programs:** Unify socioeconomic programs under the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) to create a more cohesive support system for small and minority owned businesses. Specifically, the proposal creates coherent small and minority business strategy by including Preferred Providers and Employment Works programs under the GOSBA purview. It further empowers the Special Secretary to define small business program criteria.

4. **Clarify Laws and Processes:** Clarify guidance on existing procurement laws to ensure consistency and uniform interpretation across State agencies and the vendor community.
5. **Enhance Transparency:** Introduce Workforce and Supplier Diversity Plans to align with national best practices.

Sections of Procurement Reform Act and Expected Outcomes

Streamlining and Efficiency of Contracts

The section (1) increases competitiveness for Maryland small businesses, MBEs, and VSBEs; (2) provides flexibility to modify contracts while maintaining lawful compliance; (3) streamlines the proposal and noncompetitive negotiation processes; and (4) empowers the CPO to act in the best interest of the State.

(1) Increasing Competitiveness

<u>Current State:</u> Under current law, procurements valued between $50,000 and

$500,000 are designated for the Small Business Reserve (SBR). This framework unnecessarily limits small business opportunities on procurements below the $50,000 threshold.

Proposed Change: Eliminate the $50,000 floor and extend SBR designation to all procurements valued at, or below, $500,000. This broadens the scope of eligible contracts for small businesses and creates a more inclusive procurement environment.

Impact: Removing the $50,000 floor increases procurement opportunities for Maryland's small businesses, including MBEs and VSBEs, as all certified MBEs and VSBEs are eligible to register and qualify for the State's SBR program.

(2) Flexible Contract Modifications

Current State: Procurement Officers can award contracts under a small procurement threshold ($100,000) without BPW approval, but must submit subsequent modifications – including modifications valued below the small procurement threshold – for BPW review and approval, creating avoidable delays and complicating contract management.

Proposed Change: This legislation empowers Procurement Officers to modify contracts in the best interest of the State, provided the modifications (a) do not materially alter the scope of work, and (b) do not exceed the small procurement threshold.

Impact: These legislative changes will enhance the cost-effectiveness of State contracting processes, alleviate BPW workload by reserving its attention for more complex matters, and grant procurement units the flexibility to adapt contracts as necessary, in the best interests of the State.

(3) Streamlining Procurement Processes

Current State (a): Procurement Officers may, but are not required to, use oral presentations when evaluating bids. Whereas asynchronous reviews of written proposals favor larger organizations that can afford proposal writers, oral presentations afford small and minority businesses – particularly those new to State contracting – opportunities to clarify their intent during question-and-answer sessions.

Proposed Change (a): This legislation mandates oral presentations for competitive sealed procurements and master contracts when the award is anticipated to exceed $2,000,000 for architectural and engineering services, $10,000,000 for construction and construction-related services, and $5,000,000 for other procurements, including information technology (IT) and professional services. Procurement

Officers will have the discretion to waive oral presentations if they can provide a written justification indicating the immateriality of evaluation.

Impact (a): Oral presentations provide clearer communication between vendors and State evaluation committees. Clear multi-faceted communication provides deeper insights into proposals and allows committee members ask pertinent questions.

Current State (b): The Department of Budget and Management (DBM) is responsible for determining which types of procurements can use the noncompetitive negotiations source selection method, because DBM was the primary procurement unit for services contracts and this procurement method can only be used for human, social, or educational services provided directly to individuals with disabilities, individuals who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, displaced or minors when there are at least two sources available for the services, but the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.

Proposed Change (b): This legislation empowers the CPO or their designee, instead of DBM, to determine the types of procurements eligible for the noncompetitive negotiations source selection method and corrects an oversight in earlier procurement reform legislation that removed DBM as a primary procurement unit and moved all services under DGS as the primary procurement unit.

Impact (b): This change will streamline and centralize procurement policies and processes within OSP under the direction of the CPO. Moving this authority from DBM to DGS and the CPO will both (1) further centralize procurement decisions under one primary procurement control agency, thus ensuring prompt action can be taken when needed to determine the classes of procurement eligible for noncompetitive negotiation and reducing the steps involved with approval processes, which will streamline these processes and make them more effective, and (2) assist in developing procurement methods for acquiring emerging technologies and meeting highly specialized requirements, ensuring efficiency and effectiveness in public procurement.

(4) Empowering the CPO to Best Serve Maryland

Current State (a): Expedited procurements are essential to swiftly address urgent needs. However, current BPW approval requirements can hinder an agency's ability to be responsive and move urgently – values central to the Moore-Miller Administration.

Proposed Change (a): This legislation empowers the head of the primary procurement unit, or the CPO, to directly approve expedited procurements. It mandates that the procuring unit draft a BPW agenda item as soon as feasible, allowing the agency head or CPO to include the expedited procurement on the next available BPW agenda.

Impact (a): This change ensures agencies can take prompt action when urgent situations arise, while still maintaining timely oversight from the BPW on expedited procurements. Although the number of emergency or expedited procurements decreased significantly (to 55)[1] in fiscal year 2023 following a COVID induced spike – 210 in FY21 and 104 in FY22 – this new approach aligns procurement practices with the Moore-Miller commitment to an agile, accountable, outcomes focused Public Service.

Current State (b): Current statute mandates BPW approval for a unit to cancel a solicitation or reject all bids or proposals. This requirement creates a conflict between statutory obligations and existing regulations, as the BPW has delegated this authority to the head of the control agency under COMAR 21.06.02.01.

Proposed Change (b): This legislation formalizes COMAR 21.06.02.01 by enabling the CPO, or their designee, to cancel solicitations or reject all bids and proposals.

Impact (b): By streamlining solicitation cancelation and bid rejection protocols, this legislation creates responsibility-authority parity and enhances the State's ability to efficiently respond to changing requirements and funding dynamics.

Methods of Source Selection and Workforce Diversity Plan

This section enhances source selection and workforce diversity by (1) increasing competition by affording the State greater flexibility to meet evolving needs; (2) optimizing the master contracting process; and (3) increasing transparency around how the State's procurement ecosystem facilitates workforce diversity efforts.

(1) Increasing Competition through Adaptable State Entities

Current State: The CPO lacks the authority to establish source selection methods and to approve intergovernmental cooperative purchasing agreements (ICPAs). As a result, all ICPA requests must be approved by the Secretary of the Department of General Services.
Proposed Change: This legislation creates parity between the CPO's responsibility and attendant decision-making authority around source selection methods.

[1] FY 2025 Managing for Results (MFR), Board of Public Works – FY 2023 Actual Data [link]

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Impact: This will create improved accountability and role clarity, enhanced flexibility and responsiveness, and administrative efficiency.

(2) Optimizing Master Contracting

Current State: Despite master contracting being designed to facilitate a streamlined procurement process, current law mandates solicitations valued between $100,000 and $500,000 be sent to all master contractors. This requirement forces Procurement Officers to review numerous task orders (sometimes hundreds), leading to inefficiencies and unnecessary delays, particularly for relatively small procurements.

Proposed Change: This proposed legislation seeks to optimize the master contracting process by revising solicitation requirements. For task orders valued at $100,000 or less, solicitations will be sent to a minimum of three master contractors or all master contractors, whichever is less. For task orders valued between $100,000 and $500,000, solicitations will be directed to a minimum of six qualified master contractors or all master contractors whichever is less. For task orders valued over $500,000 solicitations will be directed to all master contractors–unless the procurement is designated as a SBR.

Impact: These changes will enhance the efficiency of the master contracting process, allowing Procurement Officers to focus their efforts on a more manageable number of task orders. The legislation makes master contracting a more attractive way of streamlining the procurement cycle time, serving as an efficient tool for agencies, while also promoting the use of small businesses as an agency could reserve a contract only for SBRs.

(3) Increasing Transparency

Current State: The State has limited visibility into vendors' diversity initiatives, and there are no formal requirements for Workforce Diversity Plans.

Proposed Change: This legislation adds Workforce Diversity Plans for contracts over $500,000 and Supplier Diversity Plans for contracts over $250,000. This change will update Maryland's procurement practices to mirror best practices in other states, including Massachusetts, where the Supplier Diversity Program (SDP) mandates that prime suppliers awarded large contracts formulate a supplier diversity plan that outlines specific commitments.

Impact: The Workforce Diversity Plan and Supplier Diversity Plan will provide OSP and other State agencies with valuable insights into vendors' workforce diversity efforts. It will also inform future policy decisions and support the

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Moore-Miller objective to develop a more diverse and equitable workforce.

Procurement Preferences

This section enhances Maryland's competitiveness and ensures that entrepreneurs from all backgrounds have access to work, wages, and opportunities for wealth creation by (1) ensuring that bids or proposals are not rejected for minor irregularities on submission forms; (2) allowing MBE and VSBE goals to be added or increased on procurements; (3) reducing reporting burdens for MBEs; (4) centralizing socioeconomic programs under GOSBA; and (5) creating a reserve for VSBEs and authorizing its use by agencies closest to the veteran community.

(1) Ensuring that bids or proposals are not rejected for minor irregularities on submission forms

Current State: Existing law unnecessarily restricts amending MBE and VSBE participation schedules, which unintentionally harms minority and veteran-owned small businesses that have proposed to work in good faith with prime contractors on procurements with MBE or VSBE participation goals. Procurement officers are required to reject bids or proposals when MBE and VSBE forms are not completed accurately, forcing the State to consider higher priced bids or not evaluating technical proposals. In some cases, this results in a single bid or proposal to be considered or a failed procurement with no other options.

Proposed Change: This legislation would allow the procurement officer to amend MBE and VSBE participation schedules when done in consultation with the MBE or VSBE liaison,and will also better align MBE and VSBE laws.

Impact: Maryland will better be able to maintain competitiveness for procurements with MBE and VSBE participation goals by ensuring that prime contractors are able to amend their participation schedule after submission of a bid or proposal, while still committing to meet the overall goal or goals when deemed appropriate by the procurement officer.

(2) Adding or Increasing Participation Goals

Current State: Existing law was largely created in response to a business landscape that was uninviting to minority businesses. Ongoing social improvements mean that vendors are often willing to increase goals as conditions change. Agencies are prohibited from setting goals on certain contracts despite opportunities to do so and vendors willing to participate.

Proposed Change: This legislation addresses these limitations by clarifying that agencies may consider adding or increasing MBE and VSBE participation goals at any point before contract execution. Furthermore, goals can be adjusted after contract execution, if it is deemed in the best interest of the State, with approval from the head of the agency and through an amendment to the contract and participation schedule.

Impact: Maryland has an opportunity to adopt procurement best practice and join 87% of public procurement offices across the nation that permit negotiation of non-mandatory terms and conditions after tentative award[2]. This legislation encourages agencies to engage with prime contractors to include these vendors as subcontractors in more contracts, fostering their growth and competitiveness, while also enhancing reporting accuracy for MBE and VSBE participation in contracts, ensuring that contributions of these enterprises are adequately recognized and tracked.

(3) Reducing Reporting Burdens for MBEs

Current State: MBEs must submit monthly reports detailing all payments received, which can create unnecessary burdens, particularly when an MBE does not anticipate performing any work during certain periods of the contract.

Proposed Change: This legislation provides GOSBA the authority to establish specific reporting parameters to reduce the reporting burden on MBEs while allowing the State to effectively monitor payments.

Impact: Easing reporting requirements for MBEs will better support businesses, while facilitating a more efficient process without compromising oversight. This legislative change does not alter existing obligations for prime contractors to pay MBE subcontractors for work performed or the mechanisms available to MBEs for disputing delayed or missed payments.

(4) Centralizing Socioeconomic Programs

Current State: Some State socioeconomic programs operate without GOSBA oversight, resulting in a lack of centralization that limits the effectiveness of these programs and weakens the relationship between affected constituencies and State government.

Proposed Change: This legislation aims to centralize oversight by incorporating GOSBA's Special Secretary into the Pricing and Selection Committee for Preferred Providers. It also relocates the Employment Works Program from DGS to GOSBA and empowers the Special Secretary, instead of the Board, to adopt regulations defining the criteria for small business

[2] Governing Institute, 5 Trends That Are Reshaping How Governments Buy [link]

qualifications under the small business preference program, including the maximum number of employees a business may have to qualify as a small business in a certain class and defining a business as a small business for the exclusive purpose of pursuing out-of-state contracts.

Impact: Centralizing these programs within GOSBA fosters a closer relationship between small businesses, MBEs, VSBEs, and the State, as well as contributes to the development and implementation of policies that support small, socially, and economically disadvantaged businesses.

(5) Creating a VSBE Reserve

Current State: While the Administration has successfully increased statewide goals for the utilization of VSBEs there is currently no specific procurement mechanism that allows agencies to solicit work exclusively from VSBEs, similar to the existing SBR program.

Proposed Change: This legislation establishes a new Veteran-Owned Small Business Reserve, which will restrict procurement opportunities to businesses that qualify as VSBEs; empowering the Department of Veterans and Military Families and the Maryland Military Department to designate procurements as eligible for this reserve.

Impact: Creating a dedicated procurement mechanism will significantly enhance the opportunities for VSBEs to secure State contracts. Agencies closest to the veteran community will be better positioned to promote the use of VSBEs and will directly contribute to an increase in contracts awarded to these enterprises and supporting the growth of veteran-owned businesses in Maryland.

Prompt Payments

Legislative Package DGS.08 OSP accelerates vendor payments for completed work, to make Maryland a more appealing business partner by (1) requiring payments to small businesses under SBR contracts be made within 15 days; and (2) mandating the 21st Century Financial Systems Enterprise Workgroup to explore the feasibility of implementing immediate or prompt payment features, including the possibility of simultaneous payments to both prime and subcontractors.

(1) Prompt Payments on SBR Contracts

Current State: Current law requires the State pay businesses within 30 days after a payment becomes due. However, this delay can disproportionately impact small and minority owned businesses, which often operate with limited cash flow.

Proposed Change: This legislation amends the payment timeline by requiring the State to make payments within 15 days after a payment becomes due and the unit has received a proper invoice under an SBR contract.

Impact: Facilitating faster payments will help small businesses reduce their reliance on credit and potentially lower operational costs, while the new and improved process will encourage more small businesses – particularly MBEs and VSBEs – to engage in State contracting.

(2) 21CFSE Workgroup

Current State: The 21st Century Financial Systems Enterprise is an initiative aimed at replacing the outdated accounting system (FMIS) currently used by all State agencies. The existing system hampers efficient financial transactions between the State and the vendor community, often resulting in payment delays and inaccuracies.

Proposed Change: This legislation requires the working group to explore the integration of immediate or prompt payment features into the new financial system, as well as assess the feasibility of enabling simultaneous payments to both prime and subcontractors by the State.

Impact: State dealings have long been primed, through stakeholder feedback, for payment automation and expediting infrastructure. This initiative enhances financial transaction efficiency and significantly improves vendor cash flow. As a result, Maryland will become a more attractive business partner, foster greater participation, and support the growth of the local economy.

Clarification of Terms, Delegation, and Procurement Law

This section centralizes Maryland's procurement functions by (1) authorizing the DGS Secretary to delegate any powers or duties related to general procurement to the CPO; (2) mandating State procurement laws be consolidated within SF&P Division II; and (3) clarifying the definitions related to contracts and IT supplies and services.

(1) Secretary Delegation to CPO

Current State: Current statute grants the DGS Secretary the authority to delegate certain powers to the CPO, but it does not explicitly permit the delegation of responsibilities related to Division II of the SF&P, known as "General Procurement Law." This ambiguity limits the CPO's ability to fully manage procurement operations.

Proposed Change: This legislation aims to clarify and expand the delegation authority by explicitly allowing the DGS Secretary to delegate Division II responsibilities to the CPO.

Impact: Given the law already mandates the CPO's responsibility for "all procurement activity for the Executive Branch of State government," this change will enable a more cohesive and efficient procurement framework, helping to streamline operations through clarified delegation and facilitating faster decision-making.

(2) Consolidating State Procurement Law

Current State: Not all State procurement laws are consolidated within Division II of the SF&P, known as "General Procurement Law," creating confusion for agencies, vendors, and the public.

Proposed Change: This legislation mandates that all future procurement laws pertaining to specified State procurements be included in Division II, ensuring a more organized and accessible compilation of procurement statutes.

Impact: Centralizing procurement laws within Division II will enhance transparency and access for all stakeholders, making it easier to navigate the procurement framework and leading to improved compliance and engagement in the procurement process.

(3) Clarifying Definitions

Current State: The term "statewide contract" is not currently defined in law, leading to confusion with other contract types, such as master contracts. This ambiguity can result in delays in procurement processes and inconsistency among procurement offices and stakeholders.

Proposed Change: This legislation will clearly define "statewide contracts", ensuring a uniform understanding across all procurement offices. Additionally, it will clarify definitions related to IT services and supplies, categorize tangible IT products as supplies, and allow procurement under DGS′ full delegation for supplies and commodities.

Impact: This legislation will enhance operational efficiency, reduce procurement delays, and foster a consistent framework for all stakeholders by establishing a clear definition of statewide contracts and streamlining the classification of IT products.

Internship and Apprenticeship Preference Program

This section fosters education and skills development for Maryland students and apprentices, supported through winning state contract firms offering paid apprenticeships and internships that provide valuable experience and training within competitive industries and enhance the career pathways for Maryland's citizens.

(1) Establishing a Preference for Internships and Apprenticeships on certain State Contracts

Current State: This legislative package would create new opportunities for students attending Maryland schools to receive an internship and Maryland citizens to receive an apprenticeship through a contractor providing goods and services on certain State of Maryland contracts.

Proposed Change: This legislation aims to create a requirement that certain procurements utilize internship and apprenticeship programs, including a requirement that covered procurements valued at $1,000,000 or more require internship programs. The CPO, in consultation with the Secretary of Labor, will create guidelines to determine the scope of what procurements will be covered by these provisions. The Secretary of Labor will create guidelines to assist units in ensuring contractor compliance with this legislation, including determining liabilities when a contractor fails to use apprentices or interns as provided in the bid or proposal.

Impact: This approach makes Maryland self-sufficient in providing meaningful internships and minimizes workforce shortages. Studies have shown that students who obtain internships in Maryland for their field of study, stay in Maryland for their careers and help grow Maryland's economy. Similarly, apprentices who learn a trade in Maryland, pursue jobs in Maryland that can support their families and will contribute to the State's workforce and economy.