

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 353 (Delegate Reznik, *et al.*)
Health and Government Operations

Reorganization of State Procurement

This bill establishes, with delayed implementation, the position of Chief Procurement Officer (CPO) within the Board of Public Works (BPW) to control and oversee all procurement activity subject to oversight by BPW. Procurement control authority currently exercised by various agencies is repealed, although the CPO retains authority to delegate procurement authority to agencies with specific expertise. The bill also establishes that all contracts subject to BPW oversight, with the exception of specified contracts by public universities, valued at \$500,000 or more may be required to be approved by BPW. The bill includes related activities and reporting requirements for BPW, the Office of the Attorney General (OAG), the Maryland Department of Transportation (MDOT), the University System of Maryland (USM), and the Department of Budget and Management (DBM).

The establishment of the CPO position (and all of its attendant responsibilities) takes effect October 1, 2018.

Fiscal Summary

State Effect: General fund expenditures by BPW likely increase by between \$1.0 million and \$1.5 million in FY 2019 to staff the Office of the Chief Procurement Officer, as described below. Out-year costs are slightly higher due to annualization and inflation. The reclassification of existing procurement positions likely results in additional increases in general and special fund personnel expenditures, beginning in FY 2018, but a reliable estimate is not feasible. All affected agencies can prepare the required reports with existing budgeted resources. Over time, the enhanced transparency, efficiency, and accountability that the bill creates within State procurement is expected to generate considerable savings in State procurement costs, likely in the millions of dollars, but the savings are not expected to be realized in the timeframe covered by this fiscal and policy note. No effect on revenues.

Local Effect: The bill may have an indirect effect on local procurement to the extent that it promotes or restricts the use of intergovernmental purchasing agreements.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The position of BPW Procurement Advisor is eliminated and its functions are assumed by the CPO. In addition to the responsibilities previously assumed by the Procurement Advisor, the CPO is responsible for:

- controlling and overseeing all State procurement that is subject to State procurement law;
- ensuring that procurement policies, procedures, and forms are the most advanced available;
- developing regulations to implement State procurement law for approval by BPW;
- delegating control of procurement activity to units with expertise in specified types of procurement, while retaining oversight;
- developing performance metrics for State procurement;
- implementing strategic sourcing when appropriate;
- issuing annual summaries and descriptions of all procurement activity in the State;
- advising the General Assembly on legislation to enhance the efficiency and transparency of State procurement;
- managing eMaryland Marketplace (eMM);
- coordinating with other governmental entities and local entities to maximize the use of intergovernmental purchasing; and
- employing staff in accordance with the State budget. To the extent practicable, the CPO must use staff currently working for BPW and transfer procurement staff from other agencies to assist in carrying out the CPO's functions under the bill.

On or before October 1, 2019, the CPO must report to relevant policy committees of the General Assembly on:

- a structure for delegating and overseeing specified types of procurement to units with expertise in those types of procurement;
- the development of performance metrics and the implementation of strategic sourcing;
- recommendations for consolidating and deleting existing reporting requirements;

- recommendations for reporting requirements for procurement units that are exempt from BPW oversight;
- whether the statutory preference for competitive sealed bids should be changed and, if so, how;
- whether the small procurement threshold of \$25,000 should be raised and, if so, by how much; and
- which statutory exemptions from State procurement law and obsolete programs, if any, should be repealed.

Also by October 1, 2017, BPW's General Counsel and OAG must report to the relevant policy committees of the General Assembly on a process for establishing a centralized procurement attorney office in the State to provide consistent interpretation and application of procurement laws to BPW and procurement staff.

By October 1, 2017, BPW and DBM must establish new job titles and classifications for current and future procurement staff in the State Personnel Management System (SPMS) to establish clear lines of authority, a single path of advancement, and consistent job titles and compensation across agencies. In renaming and reclassifying positions, DBM must ensure that no current employees experience a diminution in responsibilities or compensation.

By October 1, 2018, BPW, in consultation with USM and MDOT, must report to the Governor and General Assembly on strategies to enhance the authority of the CPO over procurement staff employed under independent personnel management systems, including the feasibility of including those staff under SPMS.

The bill establishes legislative intent that, at the discretion of the CPO, (1) procurement staff who provide procurement services exclusively to a particular State agency may be housed at that agency while employed by the Office of the CPO and (2) staff employed or hired by smaller agencies who have significant duties separate and apart from procurement may continue to be employed by their agencies, but still be subject to the CPO's authority on procurement-related matters.

Current Law: Division II of the State Finance and Procurement Article and Title 21 of the Code of Maryland Regulations (COMAR) together provide the framework for procurement in Maryland. Statute authorizes BPW, a constitutional entity consisting of the Governor, Treasurer, and Comptroller, to control procurement by State agencies by setting policy, adopting regulations, and establishing internal operational procedures. At the same time, however, statute authorizes BPW to delegate any of its procurement authority that it determines to be appropriate for delegation and requires BPW approval for specified procurement actions. The board does not have authority over capital expenditures by

MDOT or the Maryland Transportation Authority (MDTA) in connection with State roads, bridges, or highways.

Statute requires BPW to appoint a Procurement Advisor who serves at the pleasure of the board. Statute also delineates 16 distinct responsibilities for the Procurement Advisor, including examining all procurements subject to board review and making recommendations regarding their appropriateness, enhancing communication among State agencies regarding procurement matters, and establishing policies for effective training of State procurement staff. The Procurement Advisor is not authorized by statute to manage or oversee procurement by State agencies. BPW's General Counsel provides legal advice to the board, but OAG interprets procurement laws and regulations for agencies.

State law establishes 10 primary procurement units with exclusive jurisdiction over their own specified procurements, subject to BPW's authority. In addition, 7 of the 10 agencies are authorized to control and supervise the procurement of specified goods or services for the State. These agencies are referred to as control authorities. Four of the control authorities actively oversee the procurement of other agencies: the State Treasurer (for banking and financial services, insurance, and insurance services); DBM (for services and motor vehicle leases); the Department of General Services (DGS) (for real property, other supplies, construction, and construction-related services); and the Department of Information Technology (for information processing and telecommunication equipment and services). MDOT, the Maryland Port Commission, and the Department of Public Safety and Correctional Services are also recognized as control authorities but do not have active oversight of other agencies. Additionally, USM, Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are primary procurement units (*i.e.*, they manage their own procurement) but are not control authorities; they are also exempt from most provisions of State procurement law, and the bill maintains that exemption.

eMM has been Maryland's online procurement portal for the past decade. Agencies may not charge vendors a fee to access eMM, nor can they be charged a fee to post notices of a procurement or award or to use eMM to conduct a procurement. State agencies must post all invitations for bids and requests for proposals valued at \$10,000 or more on eMM, but they are not required to receive bids and proposals electronically. All contract awards in excess of \$25,000 must also be posted on eMM. eMM is self-sustaining, with a 1% vendor fee on all agency purchases from statewide contracts providing approximately \$1.2 million annually for its operation and maintenance.

Under COMAR, BPW authorizes primary procurement units to enter into procurement contracts up to \$200,000 without board approval. However, Chapter 450 of 2012 raised the threshold for service and capital improvement contracts by USM, MSU, and SMCM from \$500,000 to \$1.0 million. Most procurements valued at \$200,000 or more (or \$1.0 million for the public universities) must be submitted to BPW for approval.

Agencies may also modify specified contracts without board approval but must report contract modifications that exceed \$50,000. Also through COMAR, control agencies have sub-delegated authority to agencies for some procurements valued at less than \$200,000.

In addition to the exemptions for public universities and road projects, statute exempts about 30 State entities from most State procurement law. These exemptions typically are not all encompassing; instead, they usually are for discrete procurement activity, such as the restoration of historical buildings for DGS or investment managers for the State Retirement Agency.

Background: During the 2014 interim, the Department of Legislative Services (DLS) conducted a comprehensive review of State procurement policies and practices to identify strategies for improving their competitiveness, efficiency, and transparency. That report is titled [*Review of Maryland's Procurement Policies and Structures*](#).

The report identified several issues regarding the organization and operation of State procurement, including:

- vendor frustration and diminishing participation in State procurement (according to BPW, 11.2% of contracts presented to it for approval in fiscal 2013 had only one bidder);
- inconsistent application of State procurement policies among agencies (the report highlights one instance where differing interpretations of procurement requirements by two agencies resulted in the State paying \$300,000 more for a contract than it likely needed to);
- lack of strategic planning for cost savings;
- low morale among procurement staff;
- inadequate use of technology; and
- obsolete programs and burdensome reporting requirements.

To address these issues, DLS recommended:

- reorienting the purpose of State procurement to be obtaining the best value for the State instead of the best price;
- creating the CPO position within BPW to streamline and standardize State procurement policies and practices;
- raising the threshold for BPW contract approval from \$200,000 to \$1.0 million to reduce administrative burdens on agencies;
- integrating eMM with the State's financial management system;
- repealing obsolete programs and consolidating reporting requirements;

- reconfiguring and standardizing position titles, classifications, and compensation for procurement staff across agencies; and
- raising the ceiling for small procurements from \$25,000 to \$50,000.

Based on an analysis conducted by a procurement consultant hired by BPW, DLS estimated that implementation of these recommendations could generate annual savings of approximately \$100 million in procurement costs.

On February 10, 2016, Governor Hogan issued Executive Order 01.01.2016.05, which establishes a Commission to Modernize State Procurement and includes membership from State agencies and constitutional officers, the General Assembly, and the public. It is chaired by the Lieutenant Governor, staffed by BPW, and its final report is due to the Governor by December 31, 2016.

State Fiscal Effect: The bill provides a great deal of flexibility to the CPO in staffing the office to carry out the functions it delineates. To the extent practicable, the CPO is to use existing BPW staff and procurement staff from other agencies to carry out its duties. Based on the findings and recommendations of the DLS report, and consistent with the bill granting the CPO authority to delegate procurement authority, it is anticipated that the vast majority of normal procurement and contract management functions will continue to be carried out at the agency level rather than by the CPO. The role of the CPO is expected to be primarily to carry out strategic and oversight functions, with a focus on (1) ensuring the use of modern and standardized procedures by agency procurement staff; (2) implementing strategic sourcing to reduce costs; (3) upgrading eMM; (4) coordinating training; and (5) developing performance metrics and associated reporting.

Under the assumption that most procurement activity continues to be carried out by agencies, the CPO's ability to draw from procurement staff at other agencies is limited, because reducing procurement staff will put undue strain on procurement units. Also, with just nine current positions, BPW has had enough staff to carry out only an "audit and review" function with respect to State procurement, not the strategic functions envisioned by the bill. However, raising the BPW contract threshold from \$200,000 to \$500,000 is expected to reduce the number of contracts that come to BPW for approval by about 30%, from about 500 annually to about 350. This should free up some staff capacity within BPW to carry out the functions envisioned by the bill and also reduce administrative burdens on procurement units.

Given the considerable responsibilities assigned to the CPO, combined with the flexibility given to the CPO to organize the office as appropriate, a definitive estimate of the amount of staff necessary to carry out these functions is not feasible. One staffing model, developed by DLS in consultation with BPW, envisions 20 new staff at a cost of approximately \$1.3 million in fiscal 2019, which accounts for the October 1, 2018 start

date for the CPO. This includes the CPO, a Deputy CPO, three senior oversight officers, additional counsel, training staff, and support staff. It also accounts for the deletion of the Procurement Advisor position within BPW and the transfer of the eMM manager position from DGS to BPW, consistent with the bill's requirement that the CPO manage eMM. To the extent that the CPO develops an alternative staffing model, first-year costs may vary, but they are not expected to be outside the range of between \$1.0 million and \$1.5 million.

It is anticipated that, within three years of the CPO's establishment, the strategic initiatives put in place could save the State as much as \$100.0 million annually (all funds) in reduced procurement costs. This is based on an analysis performed by a procurement consultant hired by BPW, who reviewed State policies and practices and compared them with those of other states that had implemented procurement reforms like those that are expected to be implemented by the CPO. Since the publication of the DLS report, additional examples of the costs associated with the lack of training, efficiency, and accountability in Maryland's procurement system have emerged. For instance, an audit of the MDOT Secretary's Office by the Office of Legislative Audits found that MDOT had awarded two contracts for at least \$2.9 million more than was supported by the bid documentation. It also found that MDOT was not consistently posting contract awards on eMM.

Small Business Effect: Changes in procurement policies and practices instituted by the bill and the new CPO may facilitate small business participation in State procurement.

Additional Comments: The bill maintains MDOT and MDTA autonomy from BPW for road, highway, and bridge construction, but it repeals MDOT's status as a primary procurement unit, along with all other primary procurement units. This distinction has no practical effect on road, highway, or bridge projects, but clarifying language may be necessary. For this analysis, DLS assumes that road, highway, and bridge projects are not affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Contract Appeals, Comptroller's Office, Governor's Office, University System of Maryland, Department of Budget and Management, Department of General Services, Department of Public Safety and Correctional Services, Board of Public Works, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2016
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