

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1021

(Delegate Reznik, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Reorganization of State Procurement

This bill establishes, with delayed implementation, the position of Chief Procurement Officer (CPO) who is (1) appointed by the Governor with the advice and consent of the Senate and (2) located within the Department of General Services (DGS). Except for procurement activity by a primary procurement unit other than DGS, the CPO is the head of all procurement activity for the Executive Branch and also controls procurement for DGS. The bill repeals the status of the Department of Budget and Management (DBM) and Department of Information Technology (DoIT) as control and primary procurement units and likewise repeals the status of the Department of Public Safety and Correctional Services (DPSCS) as a primary procurement unit; instead, it transfers each of their oversight responsibilities to DGS. However, DGS, through the CPO, is granted authority to delegate procurement authority to agencies with specific expertise. The bill renames and reorganizes the Procurement Advisory Council, with the CPO serving as both chair and principal staff to the council. DGS and DoIT jointly manage eMaryland Marketplace (eMM), and the bill establishes a new Electronic Transaction Fund to receive revenues from fees imposed on users of eMM. DGS must use the fund to cover the actual and documented costs of administering contracts through electronic means. The bill includes related activities and reporting requirements for the CPO, the Board of Public Works (BPW), the Office of the Attorney General (OAG), DBM, and several other agencies.

The bill takes effect October 1, 2017, but the establishment of the CPO position (and all of its attendant responsibilities) takes effect October 1, 2019.

Fiscal Summary

State Effect: No material effect on State expenditures or revenues, as it is not anticipated that the bill results directly in any expansion or retraction of procurement staff in State agencies. The reclassification and eventual transfer of existing procurement staff may

result in increases in general and special fund personnel expenditures, beginning as early as FY 2019, but a reliable estimate is not feasible; some reclassification has already occurred. All affected agencies can prepare the required reports with existing budgeted resources. The establishment of a special fund for eMM fee revenue codifies existing practice. Over time, the enhanced transparency, efficiency, and accountability that the bill creates within State procurement may generate considerable savings in State procurement costs, possibly 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: DBM's authority to control procurement of services and motor vehicle leases by other Executive Branch agencies is repealed and assigned to DGS. Similarly, DoIT's authority to control procurement of information processing equipment and services and telecommunication equipment, systems, and services by other Executive Branch agencies is repealed and assigned to DGS. DPSCS may no longer engage in the procurement of construction, construction-related services, supplies, materials, and equipment for State correctional facilities without the approval of any other primary procurement unit; instead, any such procurement activity is subject to oversight and approval by DGS.

In addition to its control authority in current law and new authority described above, DGS is authorized to:

- develop performance metrics for procurement activity;
- implement strategic sourcing when appropriate;
- compile comprehensive statistics on the procurement system by agency, amount, and type of procurement;
- effect and enhance communication on procurement matters, with an emphasis on disseminating information on current developments and advances in the management of the State procurement system;
- assist State agencies with questions regarding procurement;
- oversee the implementation of procurement officer training;
- oversee the implementation of appropriate risk analysis and insurance requirements for State procurement; and

- coordinate with governmental entities and local entities to maximize the use of intergovernmental purchasing agreements.

Procurement Advisory Council: The Procurement Advisory Council is renamed the Procurement Improvement Council (PIC). The Secretary of General Services and Executive Secretary of Public Works are replaced as members by the CPO and BPW's Procurement Advisor, respectively. The Director of the Governor's Office of Performance Improvement is also added as a member. If a member of PIC is unable to attend a meeting, the member may designate a senior management staff member with expertise in procurement to attend, instead of the agency's chief procurement officer as provided in current law.

PIC's responsibilities generally mirror those of the Procurement Advisory Council, but they are expanded to include advising the General Assembly on proposed legislation to enhance the efficiency and transparency of State procurement.

Reporting Requirements: On or before October 1, 2020, the CPO must report to the Governor and relevant policy committees of the General Assembly on:

- 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.

By October 1, 2018, the following reports must be submitted as specified:

- OAG must report to BPW and the relevant policy committees of the General Assembly on a process for establishing a centralized procurement attorney office within OAG to represent all State procurement units in matters within the jurisdiction of the Maryland State Board of Contract Appeals.
- DGS, in consultation with specified agencies, must report to the Governor, BPW, and the General Assembly on an administrative work plan to implement the CPO position and related provisions of the bill, including a structure for delegating and

overseeing specified types of procurement to units with expertise in those types of procurement.

Other Provisions: Also by October 1, 2018, BPW and DBM must establish new job titles and classifications for current and future procurement staff in the State Personnel Management System 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. Similarly, any procurement staff who are transferred under the authority of the CPO may not experience any diminution of their rights, benefits, or employment status including, if any, merit system and retirement status.

The bill expresses 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 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.

The bill makes additional technical changes reflecting the creation of the CPO position and also repeals obsolete language related to the posting of procurement opportunities by State agencies.

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 the Maryland Department of Transportation (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); DGS (for real property, other supplies, construction, and construction-related services); and DoIT (for information processing and telecommunication equipment and services). MDOT, the Maryland Port Commission, and DPSCS are also recognized as control authorities but do not have active oversight of other agencies. Additionally, the University System of Maryland (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.

For the past decade, eMM has been Maryland's online procurement portal. 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. In addition, eMM is self-sustaining, with a 1% vendor fee on all agency purchases from statewide contracts paid to a special fund; the fee generated almost \$720,000 in fiscal 2016. In fiscal 2016, responsibility for management and oversight of eMM was transferred administratively from DGS to DoIT, which has initiated a two-year project to upgrade and enhance the functionality of eMM.

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 \$100.0 million in procurement costs.

On February 10, 2016, Governor Hogan issued Executive Order 01.01.2016.05, which established a Commission to Modernize State Procurement and included membership from

State agencies and constitutional officers, the General Assembly, and the public. The commission, chaired by the Lieutenant Governor and staffed by BPW, met eight times and held three regional public forums. It issued its [final report](#) in December 2016, which included 57 recommendations, 16 of which duplicated recommendations in the DLS report. The five areas of recommendations were:

- enhancing the procurement process to attract more participation;
- streamlining architectural/engineering services procurements;
- expanding small and minority business opportunities;
- developing quality procurement personnel; and
- updating procurement oversight and structure.

The commission did not recommend the establishment of a CPO within BPW; instead, it recommended creating the position of Procurement Policy Advisor within the Governor's office, and also recommended that the Governor explore the possibility of consolidating procurement functions under DGS and MDOT.

Numerous states, including Georgia, Virginia, Washington, North Carolina, and Arizona, have undertaken procurement modernization efforts in the last 10 years. Georgia, which recently received the top ranking in a survey of state procurement by *Governing* magazine, initiated a procurement modernization initiative in 2007 that incorporates many of the same features as the bill. It consolidated most procurement authority in one agency, the State Purchasing Division, and implemented a robust strategic sourcing initiative that has generated financial benefits, including an estimated 12% reduction in purchase prices for items purchased through statewide contracts.

State Expenditures: The Lieutenant Governor's office advises that the bill is not likely to result directly in any expansion or contraction in State procurement staff, although some staff from DBM, DoIT, and possibly other agencies may be transferred to DGS. However, the administrative work plan required by the bill may ultimately result in some restructuring, expansion, or contraction of procurement staff. Any costs associated with such changes cannot be reliably predicted until the plan is developed.

Following the publication of the DLS report in 2014 and prior to the establishment of the Governor's commission, DBM reclassified procurement positions within DBM and DGS to make them consistent across departments. In response to a recommendation from the Governor's commission, and consistent with the bill's requirement, additional positions in other agencies are likely to be reclassified, which may result in additional expenditures to the extent that their compensation is upgraded. Any such increase in expenditures is not reflected in this analysis.

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. This estimate is also consistent with the experience of states like Arizona and Georgia, which implemented similar procurement modernization initiatives.

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 Information

Prior Introductions: None.

Cross File: None.

Information Source(s): University System of Maryland; Department of Budget and Management; Department of General Services; Board of Public Works; Maryland Department of Transportation; Governor's Office; Commission to Modernize State Procurement; *Governing*; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2017
mm/ljm Third Reader - March 27, 2017
Revised - Amendment(s) - March 27, 2017
Revised - Updated Information - March 27, 2017
Enrolled - May 10, 2017
Revised - Amendment(s) - May 10, 2017

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510