

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1092 (Delegate Rosenberg)

Appropriations and Health and
Government Operations

State Procurement – Emergency and Expedited Procurements – Revisions and
Reporting

This bill establishes a statutory definition of “emergency” for the purpose of deciding when to use an emergency procurement and requires that emergency procurements be approved in advance by the Chief Procurement Officer (CPO). It also extends authority to conduct expedited procurements to all agencies. Finally, it codifies and expands reporting requirements related to emergency procurements. **The new definition of “emergency” takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase minimally, likely by approximately \$10,000 annually beginning in FY 2022, to meet reporting deadlines. Agencies can otherwise implement the bill with existing resources, although some may experience operational delays in carrying out emergency procurements and completing mandated reports. No effect on revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: An “emergency” is an occurrence or condition that creates an immediate and serious need for services, materials, or supplies to avoid or mitigate serious damage to public health, safety, or welfare that cannot be met through normal procurement methods.

After obtaining the approval of the agency head for an emergency procurement, a procurement officer must obtain approval of the use of emergency procurement procedures from CPO or CPO's designee. CPO must approve or disapprove the request within 48 hours; if CPO does not respond within 48 hours, the request is considered to be approved.

Notice of the award of an emergency procurement must be published on eMaryland Marketplace (eMM) on the day of execution and approval of the contract, or as soon as practicable thereafter. Within 15 days after awarding a contract or modification by emergency procurement, an agency must submit to the Board of Public Works (BPW) and the appropriate control agency specified information about the procurement that the Code of Maryland Regulations (COMAR) currently requires to be submitted (only to BPW) within 45 days. BPW may adopt regulations to carry out this requirement.

Within 60 days (instead of 90 days under current law) of the end of each fiscal year, each primary procurement unit must submit to CPO (instead of the Governor and the General Assembly) a report required under current law on each procurement contract that was awarded during the preceding fiscal year. In addition to procurements carried out by the primary procurement unit, the report must include procurements subject to review by the unit. The report must also include additional specified information about each contract. Within 90 days of the end of each fiscal year, CPO must submit to the Governor and specified committees of the General Assembly a consolidated report that includes each of the reports from primary procurement units.

Current Law: As statute allows procurements with a value of \$50,000 or less to be conducted as small procurements, COMAR specifies that emergency procurement and expedited procurement procedures are only for procurements with a value greater than \$50,000.

Emergency Procurements

There is no statutory definition of "emergency," but COMAR defines an "emergency" as a sudden and unexpected occurrence or condition that agency management could not foresee and that requires an action to avoid or to mitigate serious damage to public health, safety, or welfare.

Statute authorizes an agency's procurement officer to make an emergency procurement with the approval of the agency head. With approval, the procurement officer may use any method considered to be the most appropriate to avoid or mitigate serious damage to public health, safety, or welfare, and must:

- obtain as much competition as possible under the circumstances;
- limit the emergency procurement to only those items, both in type and quantity, that are necessary to avoid or mitigate serious damage to public health, safety, or welfare; and
- after awarding the procurement contract, submit to BPW a written report that gives the justification for use of the emergency procurement procedure. COMAR requires the report to be filed with BPW within 45 days of contract award and requires inclusion of additional specified information about the contract.

Expedited Procurements

Only the Maryland Port Commission (MPC) or the Maryland Aviation Administration may engage in expedited procurements. Prior to the initiation of an expedited procurement, both the agency head and BPW must approve the procurement and find that:

- urgent circumstances require prompt action; and
- the need for expedited procurement outweighs the benefits of conducting the procurement on the basis of either competitive sealed proposals or competitive sealed bids.

In conducting an expedited procurement, the procurement officer must attempt to obtain as much competition as reasonably possible. COMAR requires notice of each expedited procurement to be submitted to BPW within 30 days of contract award, including specified information about each procurement.

Notification and Reporting Requirements

Within 30 days after the execution and approval of either an emergency or expedited procurement, notification of the contract award must be posted on eMM.

Within 90 days of the end of each fiscal year, each primary procurement unit must submit a report to the Governor and the General Assembly on each procurement contract awarded during the prior fiscal year. The report must include specified information, including the procurement method used and the basis for the contract award.

Primary Procurement Units

Primary procurement units are authorized to conduct their own procurements for specified goods and services without the approval of any other Executive Branch agency but still subject to the general oversight of BPW. They are:

- the State Treasurer;
- the Department of General Services;
- the Maryland Department of Transportation;
- MPC;
- the University System of Maryland;
- Morgan State University; and
- St. Mary's College of Maryland.

State Fiscal Effect:

Effects on Emergency Procurements

The requirement to obtain prior approval for each emergency procurement from CPO may, in some instances, delay the execution of emergency contracts needed to protect public health, safety, and welfare. The requirement to post notice of emergency contract awards on eMM on the day of contract approval may be operationally disruptive in instances where multiple contracts are needed over several days to address an emergency, although the bill does provide some flexibility if it is not practicable to do so.

Effects on the Office of the Chief Procurement Officer

The bill assigns new responsibilities to CPO that have the potential to strain its staff. The Department of Legislative Services (DLS) believes, however, that additional permanent staff are not necessary, but some contractual support may be needed. The primary responsibility assigned to CPO is the prior review and approval of the use of emergency procurement processes by other agencies. A recent evaluation by DLS found that fewer than 100 emergency procurements are reported to BPW each year. Administrative efforts to reduce the use of emergency procurements, in response to findings from the DLS evaluation, as well as expanded use of expedited procurements by all agencies, may substantially reduce the number of emergency procurements requiring CPO's prior approval. Assuming that the approval from the agency head, required under current law, is or can be done expeditiously in most cases, it is assumed that the review and approval process by CPO can similarly be done expeditiously and with little additional burden on CPO staff. As approval must be given before solicitation, there is likely little or no paperwork (*i.e.*, an actual contract) to be reviewed prior to giving approval. In most cases, the nature of the emergency requiring the use of an emergency procurement will be self-evident. As noted above, however, logistical issues may result in meaningful delays in some instances.

The bill also requires CPO to consolidate the annual procurement reports from the other six primary procurement units into a report for the Governor and General Assembly. As

the bill gives CPO 30 days to complete this task each year, permanent staff is not warranted. Nevertheless, CPO may require contractual assistance each year to prepare the consolidated report in the limited time available. Any additional work necessary to prepare its own annual report can also be carried out by the contractual staff. The upgrade and expansion in the functionality of eMM, expected to be completed in fiscal 2022, should facilitate the reporting process. Nevertheless, DLS believes that contractual expenses of \$10,000 annually for temporary staff support should address the reporting requirement.

Effects on State Agencies

The bill also includes provisions that likely strain the staffing resources of State agencies that conduct emergency procurements but not enough to warrant additional staff. The bill requires procurement officers to (1) secure CPO approval for emergency procurements; (2) post emergency procurements on eMM on the day of contract award, if practicable; (3) report emergency procurements to BPW within 15 days (instead of 45 days); and (4) complete annual procurement reports in 60 days instead of 90 days. DLS believes that agencies can carry out these responsibilities with existing resources, although some deadlines may occasionally be missed.

Additional Information

Prior Introductions: None.

Designated 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; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2021
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Analysis by: Michael C. Rubenstein

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