

LAM_FAV_SB0829.pdf

Uploaded by: Lam, Clarence

Position: FAV

CLARENCE K. LAM, M.D., M.P.H.
Legislative District 12
Baltimore and Howard Counties

Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Vice Chair

Baltimore County Senate Delegation

Chair

Howard County Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Miller Senate Office Building
11 Bladen Street, Room 420
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SB 829 - Emergency and Expedited Procurement - Reform

Senate Education, Health, and Environmental Affairs Committee

March 4th, 2021

Emergency and Expedited Procurement

- The Department of General Services (DGS) Office of State Procurement (OSP) is the primary unit of procurement for the State of Maryland and is headed by a Chief Procurement Officer (CPO).
- State procurement agencies can circumvent approval requirements to secure contracts during unforeseen circumstances that pose risks to public health, safety, and welfare.
 - Emergency procurements exceeding \$50,000 must be reported to DGS OSP and the Board of Public Works (BPW) within 45 days.
- Expedited procurement methods are reserved for only the Maryland Port Commission and Maryland Aviation Administration. This method is similar to emergency procurement but requires BPW approval.

Need for Emergency Procurement Reform

- Few requirements exist in emergency procurement methods that lend risk to questionable uses of state resources and do not promote agency preparedness that mitigate the need for expedited methods.
 - Currently there are no requirements for the number of bids needed to solicit before a contract can be awarded, no codified statutes that mandate the vetting of potential vendors, and no measures that promote partnerships with Minority Business Enterprises (MBE) in emergency procurement methods.
- Emergency procurement occurring during the COVID-19 pandemic highlighted many of these vulnerabilities in Maryland's procurement policy.

- Blue Flame Medical, a politically connected company in operation for mere weeks, was awarded a \$12.5 million contract that they were unable to fulfill.
- Lab Genomics of South Korea was awarded a \$9.5 million contract for COVID-19 test kits that were never utilized for the emergency use as advertised.

SB 829 - Reforms to Emergency and Expedited Procurement Methods

- Strengthens the definition of *emergency* to better reflect its purpose in state procurement
- Emergency procurements must be approved by the Chief Procurement Officer within 48 hours of a request. If the CPO does not form a decision, the request is considered approved.
 - BPW approval is required for emergency procurement contracts exceeding \$1 million.
 - Procurement officers must make reasonable efforts to solicit at least 3 oral bids.
 - Before awarding an emergency contract, the contracting business must be reviewed for its operation history and capacity to fulfil the contract.
 - Within 15 days, submit a justification report to BPW.
 - Publish the emergency contract award on the eMaryland Marketplace website within 30 days or as soon as possible.
- Within 60 days after the end of a fiscal year, each primary procurement unit shall submit a full procurement report to the Chief Procurement Officer detailing the fiscal year's expenditures regardless if a contract was awarded through emergency procurement.
 - Within 90 days after the fiscal year, the CPO will provide a consolidated report to the General Assembly.
- Grant all state procurement units the ability to utilize expedited procurement methods, not just the MPC and MAA.

Proposed Sponsor Amendment

- Amendment proposed to address feasibility concerns with the original bill text that would make it difficult for BPW to conduct frequent hearings.
- Emergency procurement contracts exceeding \$1 million require notification to the Secretary of BPW.
 - If an emergency contract is set to disburse more than \$1 million before services are rendered, a BPW hearing is required unless otherwise waived by the Secretary.
 - If an emergency contract is *not* set to disburse more than \$1 million before services are rendered, no hearing is required unless otherwise requested by the BPW Secretary.
 - BPW Secretary shall have the capacity to halt proposed emergency contracts contingent on a Board hearing.

Comptroller's testimony on SB 829.pdf

Uploaded by: Franchot, Comptroller

Position: FWA



Peter Franchot
Comptroller

TESTIMONY OF COMPTROLLER PETER FRANCHOT

Support - SB 829 - Emergency and Expedited Procurements - Reform

Education, Health, and Environmental Affairs Committee

March 4, 2021

Chair Pinsky, Vice Chair Kagan and members of the Committee, it is my pleasure to provide testimony in **support** of **SB 829 - Emergency and Expedited Procurements - Reform**. I would like to thank Senator Lam for sponsoring this legislation.

Senate Bill 829 proposes several reforms to our state's emergency procurement process. I have spoken at length at numerous Board of Public Works meetings about the need for reforms like these, and I want to applaud Senator Lam for his commitment to transparency and ensuring taxpayer dollars are spent wisely. While it's up to the legislature to ultimately determine the appropriate reporting mechanisms and timelines for reporting emergency procurements, and I believe this needs to be a collaborative process and will certainly defer to experts in terms of what is possible, I strongly believe SB 829 would bring increased transparency to the emergency procurement process.

I support increased transparency for emergency procurements but understand there are legitimate policy questions and implementation constraints. Senator Lam's office worked with my office on amendments that we believe will strengthen the bill by making it easier to implement, while still striving to meet the original intent of the legislation. I continue to encourage the legislature to work with the Administration and Departments to find adequate solutions to some of the challenges and questions that have been raised with the increase in reporting.

For the reasons stated above, I respectfully request a **favorable report** for Senate Bill 829. Thank you for your time and consideration.

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MAA_SB 829_UNF.pdf

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Position: UNF

CHAIRMAN:
Brian Russell
VICE CHAIRMAN
Jeff Graf

MARYLAND ASPHALT ASSOCIATION



SECRETARY:
Curtis Hall
TREASURER:
David Slaughter
PRESIDENT:
G. Marshall Klinefelter

March 4th, 2021

Senator Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 829 – UNFAVORABLE – Emergency and Expedited Procurements – Reform

Dear Chairman Pinsky and Committee Members:

The Maryland Asphalt Association is comprised of 18 producer members representing more than 48 production facilities, 20 contractor members, 24 consulting engineer firms and 40 other associate members. Combined our members employ more than 4,000 Marylanders in our operations. We assist with the education of our workforce, sponsor safety activities and promote best practices while working diligently to produce the highest performing pavement materials with the lowest carbon footprint. We proactively work with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

SB 829 would slow down the procurement process by implementing more steps that are seemingly counterintuitive, because the emergency procurement process is used for projects that must be done in an expedient fashion. This bill is onerous in its nature, creating more barriers to the process of developing new and innovative projects for the State of Maryland. As a result of the COVID-19 pandemic, many projects and efforts have been delayed. We cannot afford any more delays and creating a more complicated emergency procurement process would subsequently cause this. The system that is currently in place is sufficient enough and does not require any change or reform. We believe that this kind of legislation will cause the needs of Marylanders to go unaddressed for too long, and it is for these reasons we ask for an UNFAVORABLE report on Senate Bill 829.

We thank you for your time and consideration.

Thank you,

A handwritten signature in cursive script that reads "Marshall Klinefelter".

Marshall Klinefelter
President
Maryland Asphalt Association

MTBMA_SB 829_UNF.pdf

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Position: UNF



MTBMA

MARYLAND TRANSPORTATION BUILDERS
AND MATERIALS ASSOCIATION

March 4th, 2021

Senator Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 829 – UNFAVORABLE – Emergency and Expedited Procurements – Reform

Dear Chairman Pinsky and Committee Members:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials.

SB 829 would slow down the procurement process by implementing more steps that are seemingly counterintuitive, because the emergency procurement process is used for projects that must be done in an expedient fashion. This bill is onerous in its nature, creating more barriers to the process of developing new and innovative projects for the State of Maryland. As a result of the COVID-19 pandemic, many projects and efforts have been delayed. We cannot afford any more delays and creating a more complicated emergency procurement process would subsequently cause this. The system that is currently in place is sufficient enough and does not require any change or reform. We believe that this kind of legislation will cause the needs of Marylanders to go unaddressed for too long, and it is for these reasons we ask for an UNFAVORABLE report on Senate Bill 829.

We thank you for your time and consideration.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

DPSCS_OPP_SB829.pdf

Uploaded by: Kahl, Catherine

Position: UNF



Department of Public Safety and Correctional Services

STATE OF MARYLAND

Office of the Secretary Office of Government and Legislative Affairs

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LAWRENCE J. HOGAN, JR.
GOVERNOR

BILL: SENATE BILL 829

BOYD K. RUTHERFORD
LT. GOVERNOR

POSITION: OPPOSITION

ROBERT L. GREEN
SECRETARY

RACHEL SESSA
CHIEF OF STAFF

CHRISTOPHER McCULLY
DEPUTY SECRETARY
ADMINISTRATION

WAYNE HILL
ACTING
DEPUTY SECRETARY
OPERATIONS

CAROLYN J. SCRUGGS
ASSISTANT SECRETARY

GARY McLHINNEY
ASSISTANT SECRETARY

CATHERINE KAHL
ACTING DIRECTOR

EXPLANATION: Senate Bill 829 requires the Chief Procurement Officer (CPO) to approve an agency's recommended emergency contract award within 48 hours of it being submitted to the CPO. **This bill will have an operational impact by drastically affecting the Department's ability to handle an emergency. The effect of this bill will be devastating and will put the facilities, the correctional staff, and inmates at risk.** A response to an emergency may be needed within hours; waiting 2 days may cause more serious damage and increase the cost to mitigate.

COMMENTS:

- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities that house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Pretrial Complex which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less.
- Senate Bill 829 would require the Chief Procurement Officer (CPO) to approve an agency's recommended emergency contract award within 48 hours of submission. This requirement would limit the State's ability to avoid or mitigate serious damage to the facilities, public health and the safety or welfare of inmates, staff, and visitors to facilities by delaying award of emergency contracts.
- Currently, and in accordance with COMAR, a State agency may conduct an emergency procurement when sudden and unexpected circumstances that could not reasonably be foreseen require action to prevent serious damage to the public health, safety, or welfare. When that stringent standard is met, the procurement officer needs the approval of only the agency head to award the contract.
- The loss of any critical infrastructure component within a correctional facility requires immediate action. Restricting the Department's ability to take immediate action will have disastrous consequences to the safety and security of the facilities, staff, and inmates. Examples of recent emergencies include:

- Loss of an electrical transformer – the transformer supplies power for lighting. Waiting 48 hours for a determination means 400 inmates and staff will be in the dark for two nights.
 - Raw sewage flooding an inmate housing unit – this requires an immediate shut off of all water. An inmate housing unit cannot be without water or toilets for up to 48 hours, nor can the facility allow a raw sewage flood to continue for 48 hours.
 - Loss of cell door function, CCTV, intercom systems - Failure of any security electronic system would put the facilities, staff, and inmates at severe risk.
- All of the State’s correctional facilities employ a staff of Correctional Maintenance Officers and Facility Management professionals, including engineers and architects, who mobilize and arrive on site within hours of any emergency. An emergency situation is never taken lightly, as the fiscal and operational loss to the facilities, staff, and inmates can be tremendous.
 - **The minimal oversight this requirement adds may be outweighed by the need for timely responses to emergencies. A response to an emergency, such as those described above, is needed within hours; waiting 2 days may cause more serious damage and increase the cost to mitigate potentially resulting in serious damage to public health and the safety or welfare of inmates, staff, and visitors to the facilities.**

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee give Senate Bill 829 an **UNFAVORABLE** vote.

2021 SB 829 Emergency Procurement Reform DGS OPP E

Uploaded by: Robertson, Ellen

Position: UNF

Larry Hogan
Governor

Boyd K. Rutherford
Lt Governor



Ellington E. Churchill, Jr.
Secretary

Nelson E. Reichart
Deputy Secretary

OFFICE OF THE SECRETARY

BILL: Senate Bill 829 - Emergency and Expedited Procurements – Reform
COMMITTEE: Senate Education, Health and Environmental Affairs
DATE: March 4, 2021
POSITION: Oppose

Upon review of Senate Bill 829 - Emergency and Expedited Procurements – Reform, the Department of General Services (DGS) provides these comments for your consideration.

- Senate Bill 829 requires the Chief Procurement Officer (CPO) to approve an agency’s recommended emergency contract award within 48 hours of being submitted to the CPO. **This requirement would limit the State’s ability to avoid or mitigate serious damage to public health, safety, or welfare by delaying award of emergency contracts.** The minimal oversight this requirement adds may be outweighed by the need for timely responses to emergencies. A response to an emergency may be needed within hours; waiting 2 days may cause greater damage and increase the cost to mitigate.
- The bill requires emergency procurements over \$1,000,000 be approved by the Board of Public Works (BPW). BPW generally meets every two weeks. The administrative burden to prepare an agenda for BPW meetings on a biweekly basis would be greatly increased with the allowance of “emergency BPW meetings”. Conversely, **by requiring the State to wait until a BPW meeting for approval of an emergency procurement, the State’s ability to avoid or mitigate serious damage to public health, safety, or welfare may be severely limited.**
- Depending on the nature of an emergency and its duration, multiple emergency procurements may be necessary. **Therefore, the requirement to report an emergency procurement within 15 days to the BPW would be difficult because of the need to conduct additional emergency procurements.**
- DGS estimates that fulfilling the requirements under the bill, **two full-time Administrator IV positions would be needed at an estimated cost of \$159,088 in FY 2022 and rising to \$208,991 in FY 2026.**
- The bill’s definition of emergency is helpful to clarify what is acceptable for an emergency procurement. Emphasis should be added to “the immediate and serious need for services, materials, or supplies that **cannot be met through normal procurement methods**”. In a true emergency as defined in the bill, imposing additional oversight and approvals – one that is part of “normal procurement methods” (BPW approval) and one that is added by this bill (CPO approval within 48 hours) would **limit the State’s ability to avoid or mitigate serious damage to public health, safety, or welfare.**

DGS respectfully requests an unfavorable report on Senate Bill 829.

For additional information, contact Ellen Robertson at 410-260-2908.



SB0829 - Emergency and Expedited Procurements - Re

Uploaded by: Westervelt, Patricia

Position: UNF

March 4, 2021

The Honorable Paul G. Pinsky
Chairman, Senate Education, Health, and
Environmental Affairs Committee
121 House Office Building
Annapolis MD 21401

Re: Letter of Opposition – House Bill SB829 – Emergency and Expedited Procurements – Reform

Dear Chair Pinsky and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes Senate Bill 829 as it will significantly delay the processing of emergency procurements, which often require immediate actions and a thorough understanding of the situation in order to make appropriate decisions that both mitigate the situation and keep all impacted individuals safe.

Senate Bill 829 re-defines “emergency” procurements and creates new approvals, processes, and reporting requirements. Additionally, Senate Bill 829 requires MDOT and other state government agencies to receive approval from the Department of General Services (DGS) Chief Procurement Officer (CPO) before awarding an emergency procurement. This requirement will add time delays and prohibit MDOT from being able to mitigate an emergency situation effectively.

For instance, if a light rail line, roadway or Bridge is severely damaged due to an event of extreme weather, MDOT would need to procure emergency services and materials within hours to ensure the safety and welfare of travelers on Maryland’s transportation system. The emergency mitigation may include the purchase of services, goods, and contractors. Recently, a car fire caused damage to a bridge deck and MDOT needed to immediately engage the services of a firm to survey the safety of the structure. These types of situations require immediate action, so the citizens of Maryland are assured of their safety utilizing the infrastructure and so that police, fire, and ambulances have safe and direct routes to utilize when performing their duties. At a minimum, the DGS CPO would need detailed briefings and documentation related to the issue to understand and make appropriate ‘transportation’ related operational decisions in the requisite time frames.

Furthermore, Senate Bill 829 appears to conflict or create confusion with current State Finance and Procurement Article § 11-101(e), which designates the CPO as a DGS position that does not oversee MDOT or the Maryland Transportation Authority (MDTA) procurements. MDOT is a primary procurement unit or control agency for procurements given the specific and technical nature of procurements as compared to other state entities. Also, under current law, the primary procurement unit or control agency for port-related procurements is the Maryland Port

The Honorable Paul G. Pinsky
Page Two

Commission, not MDOT, DGS or the CPO. MPA's statutory mission is uniquely business-oriented and has authority to act independently. MPA's ability to successfully perform its statutory mission in the competitive port environment depends greatly on MPA's ability to act with flexibility and independence, subject to Maryland Port Commission and Board of Public Works controls. This bill would impair that flexibility and independent authority for emergency procurements.

This bill will likely result in MDOT procurement offices needing additional procurement staff to meet the reporting and administrative requirements. Unfortunately, there isn't a precise way to determine the staffing requirements as it would be dependent upon the number of emergencies.

It is vital that emergency responses be fact specific. Given the inherent danger of many of MDOT's operations, emergencies can often involve large-scale safety and public health risks. Current law governing emergency procurement strikes the appropriate balance between giving MDOT the flexibility to quickly and effectively respond to fact-specific emergencies while, at the same time, providing adequate safeguards in the procurement process. We would also like to note that all emergency procurements require approval of the Agency Head. The Agency Head has that detailed knowledge of the potential operational impacts and the required time frames necessary to mitigate the situation in order to keep the public and employees safe. Further, all procurement officers must: (1) obtain as much competition as possible under the circumstances; and (2) limit the emergency procurement to the procurement of only those items, both in type and quantity, necessary to avoid or to mitigate serious damage to public health, safety, or welfare.

The Maryland Department of Transportation respectfully requests the Committee grant Senate Bill 829 an unfavorable report.

Respectfully submitted,

Melissa Einhorn
State Legislative Officer
Maryland Department of Transportation
410-865-1102

EP Presentation_sb829.pdf

Uploaded by: Powell, Michael

Position: INFO

Emergency Procurement

**Presentation to the Senate Environment, Health, and
Environmental Affairs Committee**

By the

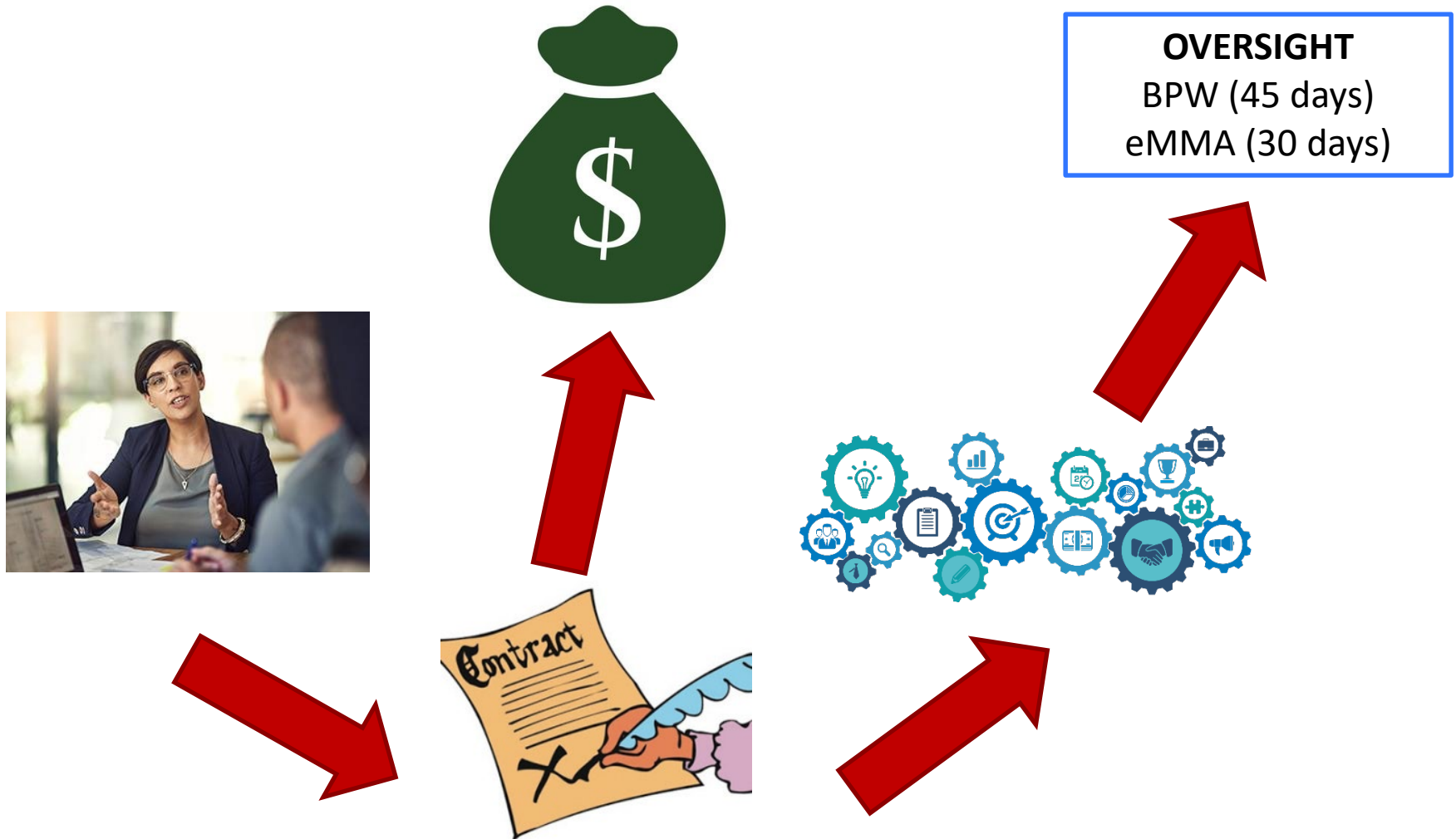
Office of Program Evaluation and Government Accountability



March 4, 2021



Emergency Procurement Process





Section A: Overview of Emergency Procurements (Fiscal 2013 through 2020)

Emergency Procurement-related Agenda Items Accepted by BPW Fiscal 2013-2020

<u>Year</u>	<u># of Emergency Procurement-related Agenda Items</u>	<u>%</u>	<u>Total \$ Awarded Via Emergency Procurement</u>	<u>% of the Overall \$ Awarded 2013-2020</u>	<u>Median Value of the Emergency Procurement Award Amounts</u>
2013	56	10%	\$37,513,565	9%	\$119,080
2014	63	11%	59,986,146	14%	172,600
2015	49	9%	21,503,518	5%	157,227
2016	79	14%	35,473,883	8%	86,665
2017	65	12%	21,168,420	5%	78,758
2018	80	15%	24,052,543	6%	122,250
2019	74	13%	156,558,000	36%	151,529
2020*	83	15%	76,913,225	18%	200,000
Total	549		\$433,169,300		\$132,000

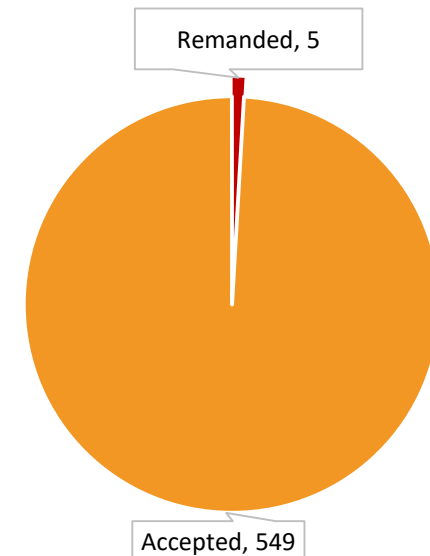
Section B: Oversight and Accountability of Emergency Procurements



- **Current oversight mechanisms have limited ability to prevent agencies from awarding emergency procurements in non-emergency situations.**

- Agencies approve and execute emergency procurement contracts prior to BPW review, and BPW accepts these awards over 99% of the time.

Emergency Procurement Agenda Items



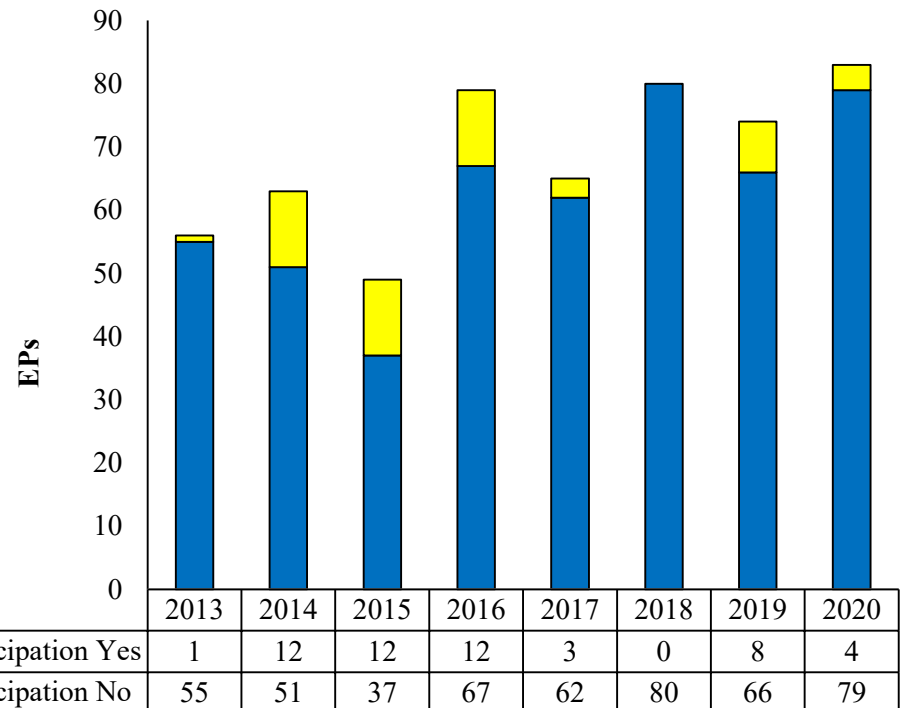


Section C: Policy Goals for Procurement

Emergency procurement contract awards tend to have lower MBE participation rates and less competition in bidding, as compared to State procurement contracts generally.

- Of the 549 emergency procurements reviewed in this evaluation, only 52 (9%) had any MBE participation listed.

Emergency Procurements Accepted by BPW
Categorized by MBE Status
Fiscal 2013-2020

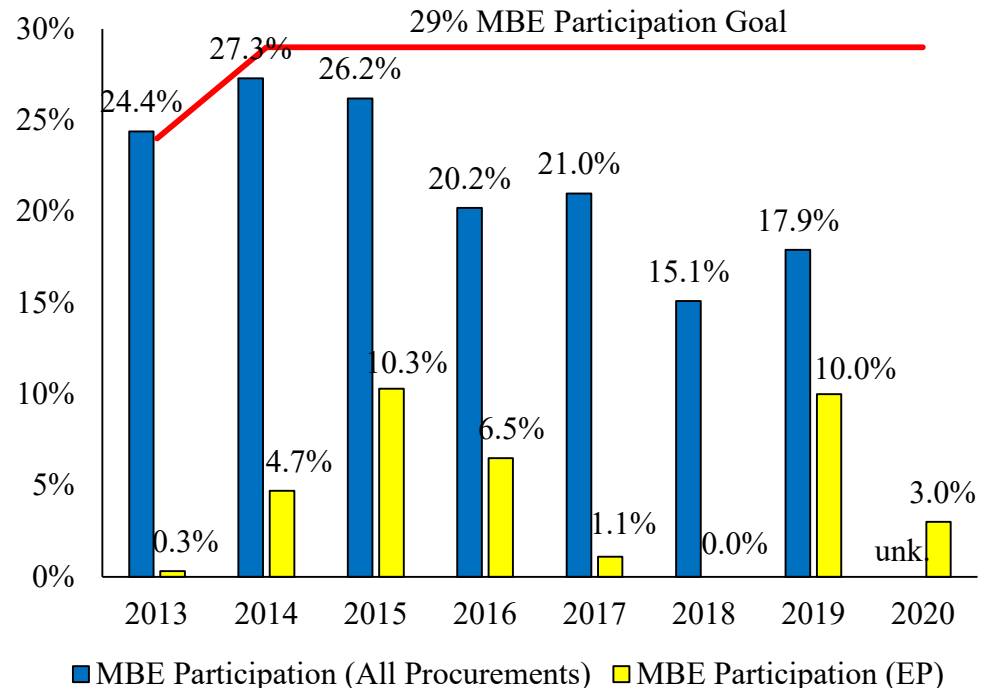




Section C: Policy Goals for Procurement

- Minority Business Enterprise (MBE) participation in emergency procurements approved by BPW in fiscal 2013 through 2020 was less than the statewide 29% MBE participation goal.

**MBE Participation (Awards) in Procurement
(Fiscal 2013-2020):
Emergency Procurements Accepted by BPW vs. All
Procurements**

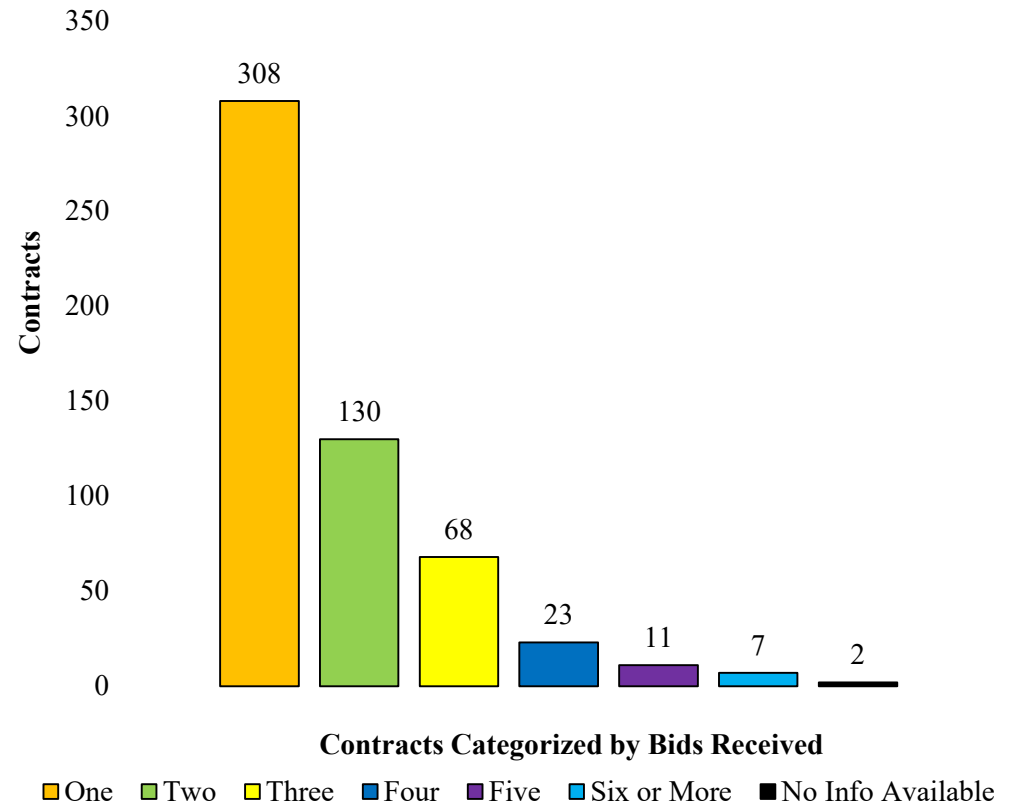


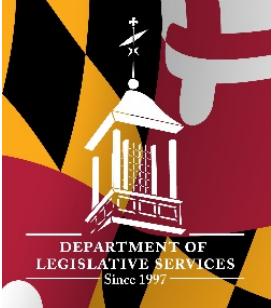


Section C: Policy Goals for Procurement

- Fifty-six percent of emergency procurements received only one bid (308 of 549 accepted by BPW over the period fiscal 2013 through 2020).

**Emergency Procurements Accepted by the Board of Public Works
Bids Received
Fiscal 2013-2020**

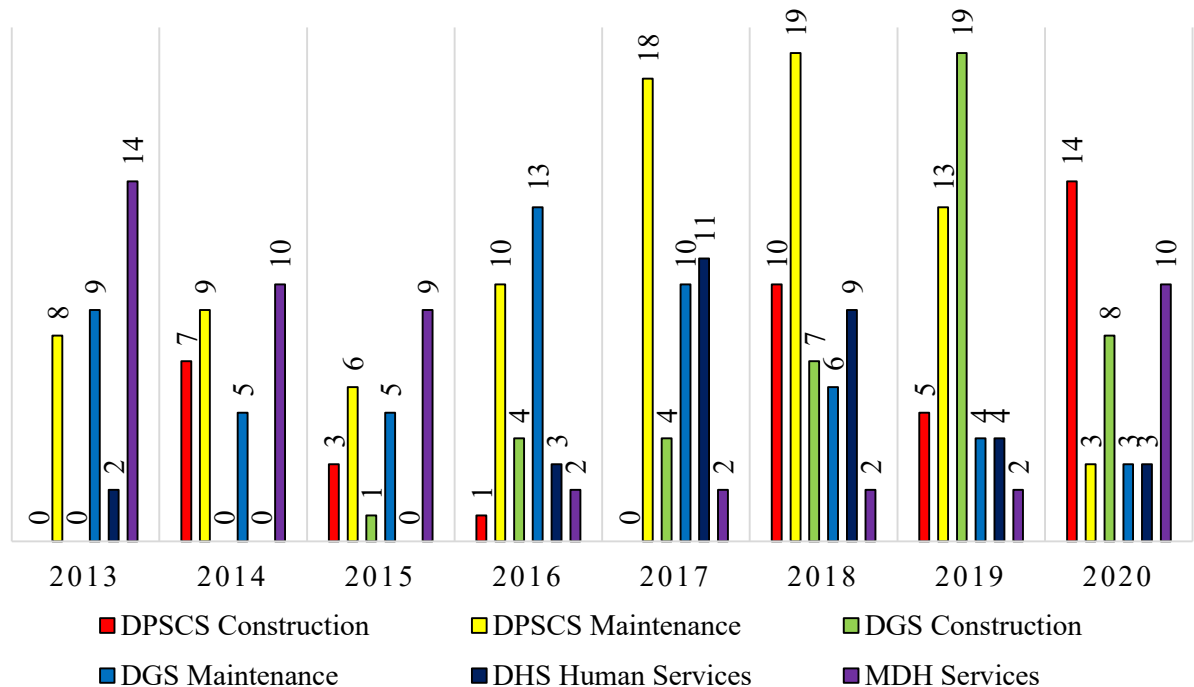




Section D: Routine Use of Emergency Procurement

There are differences in how agencies have tended to use the emergency procurement method during the eight years reviewed, with some agencies using emergency procurements much more routinely than others.

Frequently Occurring Emergency Procurement Contracts
Fiscal 2013-2020



- Although the emergency procurement method is designed for emergencies, some agencies use it to address issues that occur regularly.



Recommendations Summary

Section A: Strengthen Oversight and Reporting Mechanisms

- The Maryland General Assembly should enact legislation requiring the State's Chief Procurement Officer to submit a consolidated and thorough annual report on all emergency contract awards to the Legislative Policy Committee, Senate Budget and Taxation Committee, and the House Appropriations Committee.

Section B: Add Pre-approval of Emergency Procurements

- The Maryland General Assembly should enact legislation that requires the State Chief Procurement Officer to pre-approve every emergency procurement.



Recommendations Summary (continued)

Section C: Clarify the Definition of “Emergency” for Procurement Procedures

- Modify the statutory and regulatory definition of “emergency” for procurement policy to improve clarity and consistency in its use.

Section D: Monitor and Manage Agency Use of Emergency Procurements More Closely

- DGS OSP and procuring agencies should develop preventive maintenance plans to avoid frequent use of emergency procurement for facility maintenance and report progress on this to BPW and the Maryland General Assembly.