

Senate Bill 426 - Procurement Reform Act of 2025

Position: Support

Committee: Procurement Subcommittee, Budget and Taxation Committee

Date: February 5, 2025

From: Atif Chaudhry, Secretary, DGS

The Department of General Services (“DGS”), on behalf of the Moore-Miller Administration, strongly supports Senate Bill 426, the Procurement Reform Act (PRA) of 2025. The PRA is a comprehensive effort to make procurement more transparent, inclusive, and efficient. This legislation will benefit businesses, taxpayers, and the State workforce. This legislation introduces key improvements to streamline processes, promote workforce diversity, and improve procurement preferences. These reforms will foster a more inclusive business environment, allowing a wider range of businesses to compete fairly for State contracts. DGS requests a favorable report on the PRA as a comprehensive and bold step toward improving access for all Maryland businesses to procurement contracts.

Streamlining and Efficiency

The PRA would eliminate the \$50,000 floor and extend the Small Business Reserve (SBR) designation to all procurements valued at, or below, \$1 million. This broadens the scope of eligible contracts for small businesses and creates a more inclusive procurement environment. Under current law, procurements valued between \$50,000 and \$500,000 are designated for the SBR. This existing framework unnecessarily limits small business opportunities on procurements below the \$50,000 threshold. Removing the \$50,000 floor and raising the ceiling increases procurement opportunities for Maryland's small businesses, including Minority Business Enterprises (MBE) and Veteran-Owned Small Business Enterprises (VSB), as all certified MBEs and VSBs are eligible to register and qualify for the State's SBR program.

The PRA would further allow 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. Procurement Officers can already award contracts under a small procurement threshold (\$100,000) without Board of Public Works (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. 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.

The PRA 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. Under current law, 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. Under the PRA, oral presentations will provide clearer communication between vendors and State evaluation committees. Clear multi-faceted communication provides deeper insights into proposals and allows committee members to ask pertinent questions.

The PRA allows the Chief Procurement Officer (CPO) or their designee, instead of Department of Budget and Management (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. 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.

The PRA allows 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. This change will ensure 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) 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.

Methods of Source Selection and Workforce Diversity

The PRA would allow the CPO to establish source selection methods, creating parity between the CPO's responsibility and attendant decision-making authority around source selection methods. This will create improved accountability and role clarity, enhanced flexibility and responsiveness, and administrative efficiency. Under current law, 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.

The PRA would enhance the efficiency of the master contracting process, allowing Procurement Officers to focus on a more manageable number of task orders. This proposed legislation seeks to optimize the master contracting process by revising solicitation requirements. 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. The changes proposed in the PRA 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.

The PRA would require Workforce Diversity Plans for contracts over \$500,000 and Supplier Diversity Plans for those 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. Under current law, the State has limited visibility into vendors' diversity initiatives, and there are no formal requirements for Workforce Diversity Plans. 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 Moore-Miller objective to develop a more diverse and equitable workforce.

The PRA would codify authority granted under regulations by enabling the CPO, or their designee, to cancel solicitations or reject all bids and proposals. 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. By streamlining solicitation cancellation 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.

Procurement Preferences

The PRA 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. 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. The PRA will enhance 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.

In addition, the PRA would allow procurement officers to add or increase MBE and VSBE participation goals at any point before contract execution. Existing law was largely created in response to a business landscape that was uninviting to minority businesses, and today agencies are prohibited from setting goals on certain contracts despite opportunities to do so and vendors willing to participate. The PRA 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. 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. Under the PRA, agencies will be encouraged 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.

The PRA also 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. 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. 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.

The PRA proposes to reduce reporting burdens for MBEs. Under current law, 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. This legislation provides the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) the authority to establish specific reporting parameters to reduce the reporting burden on MBEs while allowing the State to effectively monitor payments. 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.

In addition, the PRA would centralize socioeconomic programs in GOSBA. Centralizing these programs within GOSBA will foster a closer relationship between small businesses, MBEs, VSBES, and the State, as well as contribute to the development and implementation of policies that support small, socially, and economically disadvantaged businesses.

Prompt Payments

The PRA will require payments under SBR contracts within 15 days of invoice approval. Current law requires the State to 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. The PRA will improve 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. 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.

To pursue continuous improvement in state operations, the PRA requires the 21st Century Financial Systems Enterprise (21CFSE) Workgroup 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. 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. This initiative will enhance financial transaction efficiency and significantly improve 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

The PRA would extend the delegation authority of the Department of General Services Secretary to the Chief Performance Officer. Recognizing that current 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.

In addition, the PRA would clarify the definition of "statewide contract." Under current law, 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. This legislation will ensure 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. These provisions 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.

Similarly, the PRA 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. Today, 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. 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.

Workforce Development and Good Labor Initiatives

The PRA would establish a requirement for internships and apprenticeships on certain state contracts. This proposal seeks to leverage state contracting to expand the utilization of two workforce training strategies - internships and registered apprenticeship - leading to new career pathway opportunities for countless Marylanders. Specifically, the PRA would create a requirement that covered procurements valued at \$1,000,000 or more utilize either an internship or registered apprenticeship program. 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.

Under this legislation 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. This approach will make 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 or gain other

in-demand portable job skills via a registered apprenticeship program, pursue jobs in Maryland that can support their families and will contribute to the State's workforce and economy.

The PRA establishes "Carrots for Contractors" who practice good labor standards. The legislation proposes to provide a "carrot" in the form of a contract preference for Good Labor Certified Businesses "GLCBs". When competing with non-good labor certified contractors, a GLCB will be selected if their bid exceeds that of a non-good labor certified business by up to 5%. Today, wage investigators routinely find labor standards violations at state-funded projects and on state contracts. The State has tools to enforce those standards, and the ability to educate - but as contracts are usually awarded to the lowest bidder, contractors have strong incentives to either engage in or ignore labor standards violations, particularly because those violations, whether misclassification, cutting corners on safety, or delaying or refusing to pay full wages when due, usually produce immediate labor cost savings. Under the current system of low-bidder awards, contractors have limited incentives to do the right thing (other than fear of detection).

A contractor can receive a good labor certification by demonstrating that they adopt best labor practices, including:

1. Directly employing, and requiring subcontractors to directly employ, all workers performing work under the contract;
2. Requiring that wage payments be in a form other than cash or cash app;
3. Providing advance written notification to the procurement authority and to the Department of Labor's Division of Labor and Industry of any subcontractors performing work under the contract;
4. Agreeing to successfully complete a comprehensive consultation visit by Maryland Occupational Safety and Health Program ("MOSH") and/or allow unannounced inspection by MOSH;
5. Ensuring that all subcontractors are, as a precondition of performing work, registered with the Department;
6. Ensuring and taking legal responsibility for subcontractors' compliance with workplace laws;
7. On living wage projects, furnishing a payment bond; and
8. On a prospective basis, promptly disclosing any violations (final determinations only) of workplace standards laws

This initiative will create incentives to businesses to adopt and maintain good labor practices by creating preferences in competitive bids. Many labor laws encourage compliance by penalizing the conduct that violates those laws. This proposal is intended to address the problem of noncompliance from a different direction - one that encourages and rewards firms with good labor practices.

For these reasons, DGS requests a favorable report on Senate Bill 426, the Procurement Reform Act (PRA) as a comprehensive and bold step toward improving access for all Maryland businesses to State procurement contracts.

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