

# MDH PROCUREMENT POLICY

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OFFICE OF PROCUREMENT AND SUPPORT SERVICES

MDH POLICY 02.03.01

Version Effective: October 1, 2017

## MDH PROCUREMENT POLICY

### I. EXECUTIVE SUMMARY

Maryland procurement law, with some exceptions, vests overall power and authority over procurement matters with the Board of Public Works (BPW), a body comprised of the Governor, the Comptroller and the State Treasurer. BPW has promulgated regulations that provide for delegation of procurement authority to certain Primary Procurement Units (PPUs) and allows further delegation of certain procurement authority to other State agencies like the Maryland Department of Health (MDH). These laws and regulations also define procurement methods and procedures; mandate certain clauses and provisions for solicitations and procurement contracts; outline remedies and socioeconomic policies; and specify requirements for advertising and reporting procurement activity. BPW also issues Advisories that have the effect of State policy.

This document sets forth Maryland procurement law, regulations and policy applicable to MDH, and further establishes procurement authority and delegation of procurement authority within MDH.

This policy:

- Defines the duties of a Procurement Officer and the roles of the Office of Procurement and Support Services (OPASS), the Minority Business Enterprise (MBE) Liaison Officer and the Office of the Attorney General (OAG) as it relates to MDH procurement;
- Enumerates the limitations of delegated procurement authority;
- Describes the use of Contract Fulfillment Teams (CFTs); and
- Assigns to OPASS certain responsibilities for creating and sustaining procurement documents and knowledge bases within MDH, submission of the Procurement Agency Activity Report (PAAR), maintenance of records, and development and implementation of procurement training.

### II. BACKGROUND

Legislation enacted during the 1980 session of the Maryland General Assembly established a new Article in the Annotated Code of Maryland entitled "Article 21 – Procurement." This was subsequently re-codified in 1985 as Division II, State Finance and Procurement Article (General Procurement Law). The law vests in BPW overall power and authority over the majority of procurement matters, including those that affect MDH.

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The law requires BPW to promulgate State procurement regulations, and permits BPW to delegate certain of its procurement and contracting authority to the Departments of General Services (DGS), Budget and Management (DBM) and Information Technology (DoIT) and certain other agencies that do not impact MDH. The law also permits BPW to establish policy by issuing Advisories.

Based upon the statutory authority provided by the State Finance and Procurement Article, Title 21 of the Code of Maryland Regulations (COMAR), State Procurement Regulations, was established to implement and further amplify Maryland procurement procedures. COMAR Title 21, which became effective July 1, 1981, defines procurement methods and procedures, sets forth specific clauses and provisions that must be included in State solicitations and procurement contracts, outlines remedies and socioeconomic policies, and stipulates requirements for advertising and reporting procurement activity. The regulations provide for a series of delegations of procurement authority from the PPU's, namely, DBM, DoIT and DGS, to agencies such as MDH. The delegation of procurement authority is predicated on the agency following certain procedures such as adherence to certain reporting and contract review requirements. This policy implements procurement law and regulations as they apply to MDH, and further establishes the parameters of delegated authority within MDH.

This version supersedes the prior versions of DHMH Policy 02.12.01 dated September 27, 2016 as well as the former DHMH Procurement Policy identified as DHMH 01.03.01 dated May 12, 2014. This October 1, 2017 version incorporates certain legislative changes, expands the scope of the policy, corrects content, updates links, and makes revision due to name changes and other administrative requirements. The principal legislative changes made in 2017 include a change in the name of the Department and the doubling of delegated authority for Small Procurement.

### **III. AUTHORITY**

A. Authority for this policy is derived from:

1. State Finance and Procurement Article, Division II, Titles 11-19, Annotated Code of Maryland  
[www.lexisnexis.com/hottopics/mdcode/](http://www.lexisnexis.com/hottopics/mdcode/)
2. COMAR Title 21 State Procurement Regulations  
<http://www.dsd.state.md.us/COMAR/ComarHome.html>
3. Board of Public Works Advisories  
<http://bpw.maryland.gov/Pages/advisories.aspx>

Nothing in this Procurement Policy invalidates or supersedes the controlling formal authorities set forth above.

B. Any authority to approve (See Section III.D.) procurement contracts, contract modifications or options delegated to MDH by DBM, DGS and DoIT as allowed by COMAR 21.02.03, 21.02.05 and 21.02.01.04.J, shall be in writing, and is held by the Secretary of MDH or, per Section III.B.1, a designee. Any authority to approve procurement contracts delegated to the Secretary of MDH may be re-delegated, in whole or in part, in writing. This includes authority to purchase commodities and execute maintenance contracts delegated by DGS to facilities that

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This version (MDH 02.03.01) effective October 1, 2017, supersedes and recodifies the previous versions dated September 27, 2016 (DHMH 02.12.01) and May 12, 2014 (DHMH 01.03.01).

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are part of MDH and accountable to the Secretary of MDH, including but not limited to all day and residential facilities, including hospitals and schools owned or operated by MDH.

C. The authority to approve Inter-Agency Agreements (IAs) (See Section III.D), which are exempt from the applicability of COMAR Title 21, is held by the Secretary of MDH or a designee. Likewise, the authority to approve contracts, Memoranda of Understanding (MOUs), or other business agreements held by the Secretary of MDH may be delegated, in whole or in part, in writing, to a designee. IAs with public universities with a value in excess of \$500,000 are subject to review and approval by DBM.

D. "Approve" in the context of this section (Section III. Authority) means:

1. The authority to sign contracts, contract modifications, IAs, MOUs, or other business agreements, but only after obtaining legal and budgetary approval and any COMAR Title 21 required prior approval, such as by a Control Authority or BPW. By signing any such document the Secretary or designee binds the Department to all specifications, terms, conditions and covenants contained or incorporated by reference in those documents;
2. Giving written agreement or concurrence, including by email or initialing or signing documents, memos, letters, etc., of any procurement action that COMAR Title 21 identifies as needing the approval of the Secretary or designee. Examples of such required approvals include, but are not limited to: the recommendation for award under a competitive sealed proposals procurement; the final agency response to a protest or contract claim; the approval of a waiver request from an MBE or VSBE (Veteran-Owned Small Business Enterprise) goal; and the approval of a request from a prime contractor to change an MBE subcontractor;
3. Signing any Determination which COMAR Title 21 requires to be signed by the Secretary, including, but not limited to a decision to conduct a specific procurement by the competitive sealed proposals, sole source or emergency procurement method, cancellation of a solicitation, or consent to request any second Best and Final Offer (BAFO) after the first BAFO request under a competitive sealed proposals procurement.

**IV. APPLICABILITY / EXEMPTIONS****A. Applicability.**

Except as otherwise noted in this policy, this policy applies to:

1. All procurements resulting in expenditure of funds by MDH;
2. All IAs or MOUs between MDH and another government or agency thereof;
3. All procurements by MDH, even if a resulting procurement contract will involve no expenditure by the State and will produce revenue for the State, for services that, as applied to MDH, are to be provided for the benefit of State officials; State employees;

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students at a State facility, including a school, hospital, or institution; or clients or patients at a State hospital or State institution;

4. Any revenue-producing contract that is for a purpose other than as described in Section IV.A.3. (*Note:* Although any such revenue producing contract is not covered by COMAR Title 21, it should still receive all the internal Department approvals as described in Section III.D.2); and

5. Revenue-neutral procurements that do not require an expenditure by the Department nor produce revenue for the Department.

**B. Exemptions.**

1. This policy does not apply to the following MDH independent Commissions:

- Maryland Community Health Resources Commission (MCHRC)
- Maryland Health Care Commission (MHCC)
- Maryland Health Services Cost Review Commission (MHSCRC)

Organizationally these 3 Commissions are located within MDH rather than being totally independent entities, but by law they are not subject to control by the Secretary or to the processes or procedures contained in this policy. Nonetheless, these entities must abide by the State Finance and Procurement Article and COMAR Title 21 when conducting procurements and their procurements are subject to the jurisdiction of BPW and the 3 procurement Control Authorities – DBM, DGS and DoIT. To the extent, however, that any of these Commissions is authorized by law to award grants, per Exemption B2, any such grant is exempt from this policy.

2. A grant, as defined at COMAR 21.01.02.01 B (46), is not a contract and is not governed by this policy.

3. COMAR 21.01.03.01A identifies 36 exemptions from the applicability of most, if not all, of COMAR Title 21, three of which affect MDH:

- a. COMAR 21.01.03.01 A (1) reimbursement contracts (Judicare, Medicaid, Medicare or similar reimbursement contracts) for which user eligibility and cost are set by law or by rules and regulations;

(*Note:* Department units should not seek to determine on their own whether any proposed procurement or contract falls within this exemption IV.B.3.a. Rather, OPASS will determine if this exemption applies in any given situation.)

- b. COMAR 21.01.03.01 A (4) concerning Inter-Governmental/Inter-Agency Agreements, and

(*Note:* COMAR 21.01.03.01 B provides that these contracts are subject to certain provisions of the State Finance and Procurement Article.)

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- c. COMAR 21.01.03.01 A (32) concerning contracts for family and individual support services and individual family care services for the Developmental Disabilities Administration (DDA).

(*Note:* These contracts are subject to MBE requirements.)

4. State Finance and Procurement Article, §12-109, Annotated Code of Maryland, allows Local Health Departments (LHDs) either to follow State procurement procedures or the procurement procedures of their respective local governments if the principal executive or legislative authority of their locality authorizes the use of the local government procurement procedures. As of the effective date of this policy each of the 24 local health agencies had received authorization to use and is using local government procurement procedures. But if the governing body of a local government rescinds such authority, that LHD would have to fully abide by the State procurement regulations and this policy.

If LHDs that use local government procurement procedures choose to use existing State procurement contracts for goods or services rather than conducting their own procurements, they will be making an Intergovernmental Cooperative Purchase (IGCP) as described in Section X. B of this policy. But whereas X. B discusses IGCP from the standpoint of MDH using a contract of another government, in the context of this Section IV.B.4 the LHD would be using (piggybacking off of) State of Maryland contracts. Either way, the provisions of COMAR 21.05.09 and State Finance and Procurement Article, §13-110, Annotated Code of Maryland, especially State Finance and Procurement Article, §13-110(c) and (e) apply.

## V. **DEFINITIONS**

- A. In this policy the following terms have the meanings indicated.

- B. Terms Defined.

1. **“Contract Fulfillment Team (CFT)”** means bringing together appropriate stakeholders at the same time for a given proposed or actual procurement, to process or facilitate the drafting of specifications and/or other aspects of that procurement by way of:
- a. In-person meeting;
  - b. Telephone conferencing; or
  - c. Computer-based technology (e.g. e-mail or video-conferencing).

Typically a CFT is formed for any competitive procurement expected to exceed \$50,000 in value, but may also be formed for procurements below this value or that are non-competitive in nature. The minimum composition of a CFT is one or more experts from the program to be served by the procurement, one or more persons from OPASS, an Assistant Attorney General and at least initially while MBE, VSBE and small business issues are being discussed, the MBE Liaison Officer. Other persons, as appropriate, may

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participate in a CFT, including in a limited capacity, to provide expertise or facilitate decision making, such as a representative of Department upper management, Department OIT, audit or budget personnel, personnel from a Control Authority, consultants, or representatives of stakeholders external to the Department.

2. **“Department”** means the Maryland Department of Health (MDH). This definition as applies to this policy is different from the definition of “Department” found in COMAR 21.01.02.01B(33).
3. **“Determination”** has the meaning as in COMAR 21.01.02.01B(34).
4. **“Inter-Agency Agreement (IA)”** as used in this policy and any associated procedures means an agreement between MDH and a political subdivision of the State or an agency thereof, a State agency, including a public university, a government, including the government of another state, the United States or of another country, an agency of a political subdivision of a government, or a bi-state, multi-state, bi-county or multi-county governmental agency.
5. **“Minority Business Enterprise (MBE)”** has the meaning as in COMAR 21.01.02.01B(54)
6. **“Primary Procurement Unit (PPU)”** PPU is not defined in COMAR 21.01.02.01B. Rather, ten PPUs are listed in State Finance and Procurement Article, §11-101(I), Annotated Code of Maryland. As used in this policy, PPU will refer only to the three PPUs that have general authority over procurements conducted by MDH, namely, the Department of General Services (DGS), Department of Budget and Management (DBM), and the Department of Information Technology (DoIT). These three PPUs are also among the seven Control Authorities listed in COMAR 21.02.01.03.
7. **“Small Business”** has the meaning as in COMAR 21.01.02.01B(80).
8. **“Veteran-owned Small Business Enterprise (VSBE)”** has the meaning as in COMAR 21.11.13.02B(2).

**VI. DELEGATION****A. Approval Authority.**

1. The Director of the Office of Procurement and Support Services (OPASS) is delegated by the MDH Secretary to exercise the Secretary’s authority to review and approve IAs or procurement contracts or contract modifications with a value less than \$200,000. If the OPASS Director position is vacant, any approval authority delegated to the OPASS Director may be exercised by the Deputy Director or Chief of Procurement as per Section VII.A.3.

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- a. Exceptions.
    - i. This delegation authority does not extend to those circumstances when the Secretary or designee must render an approval in addition to the approval of the procurement officer, because the same individual may not act in the capacity of both a procurement officer and agency head designee.
    - ii. The roles and responsibilities of the Secretary or designee and the procurement officer may not both be performed within OPASS, even by different individuals.
  - b. Although authority to sign agreements is included within the definition of Approve (See Section III.D), for the purpose of clarity, specific signatory authority levels are listed in Section VI.B.
2. The Director of OPASS may further delegate the procurement authority delegated by the Secretary, in whole or in part, given that:
- a. Approval authority may be delegated only to individuals, not to entities such as administrations, programs or facilities;
  - b. Delegation of approval authority is based on a determination of capacity to carry out the functions of procurement, considering factors such as completion of training, testing, experience, and practical evidence of competence in all aspects of the process;
  - c. Exercise of authority under any delegation is monitored on an ongoing basis by OPASS to assure continued adherence to procurement law, regulations and policy of the State and MDH; and
  - d. Delegation of approval authority may be withdrawn by the Director of OPASS whenever deemed appropriate.
  - e. Any such delegation by the Director of OPASS excludes:
    - i. Responding to Protests or Contract Claims;
    - ii. Rejecting all bids or proposals for procurements expected to exceed \$15,000 in value.
    - iii. Rejecting any individual bid or proposal for a procurement expected to exceed \$50,000.
    - iv. Approval of any MBE or VSBE waiver request;
    - v. Approval of a change of MBE or VSBE subcontractor.

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3. Generally, delegation by the Director of OPASS as set forth in Section VI.A.2 will be for Small Procurement Authority in the amount of \$50,000 or less, or for IAs up to \$200,000, but may, depending on the circumstances, be for any other amount up to the limit of authority delegated to MDH by the applicable PPU and further delegated by the Secretary to the OPASS Director.

**B. Signatory Authority.**

1. The Secretary may delegate authority to sign contracts and IAs with a value greater than \$200,000, to a Deputy Secretary or other senior management official by a Memorandum of Delegation. Contracts with a value greater than \$200,000 must be presented for approval by BPW. IAs are not subject to approval by BPW.

2. The Secretary may delegate authority to sign contracts and IAs with a value of \$200,000 or less, thereby binding the Department, to the Director, OPASS, by a Memorandum of Delegation.

3. The Secretary or Director of OPASS may re-delegate signatory authority for contracts or IA's with a value of \$200,000 or less, thereby binding the Department to the obligations agreed to by the Director (CEO) of a facility or Administration, to the extent that individuals in the facility or Administration have been delegated and retain procurement approval authority as set forth in Section VI.A.2.

**C. Corporate Purchasing Card Use.**

A Corporate Purchasing Card (CPC) is a State credit card entrusted to individual State employees for relatively inexpensive purchasing needs, including needs that may have time urgency. CPCs are issued as the central function of the State's Purchasing Card Program which is administered statewide by the State Comptroller's Office and within MDH by the General Accounting Division.

Except for extreme, pre-approved situations, use of a CPC is generally limited to \$5,000 for a single transaction. There are also limitations on the number and value of transactions that can be made in the same day and within the same billing period.

Individuals to whom CPCs are assigned function as Procurement Officers within the limits of the authority granted to them by the Division of General Accounting (e.g., \$5,000 or less per single transaction) and the authority delegated to them by the OPASS.

1. Without specific procurement delegation from the OPASS Director, authorized CPC users may only use a CPC to place orders against existing contracts.

2. With delegation, a CPC may be used to make small procurement purchases to the limits permitted by General Accounting.

Guidance on use of the CPC can be obtained by referring to Board of Public Works Advisory 1998-1, and especially the CPC Program Policy and Procedures Manual issued by the Comptroller's Office. Generally, when making purchases using a CPC, best practice is to solicit comparative quotes from small businesses, including MBEs and VSBEs, when available.

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Prior to October 1, 2017, MDH programs held independent authority to conduct procurements to expend amounts less than \$25,000 without going through OPASS. That level of delegated authority is now doubled to \$50,000. Authorization to conduct and approve Small Procurements on behalf of MDH programs is held by individuals who have completed Small Procurement training and are certified by OPASS. OPASS maintains a list of all such individuals who are certified to conduct Small Procurements. Certification to conduct Small Procurements also results in the approved individual being authorized to enter and approve contracts in the State's Financial Management Information System (FMIS).

Small Procurements in excess of \$15,000 are required to be posted on eMaryland Marketplace (eMM) for no fewer than 3 days. This is the responsibility of the individual certified to conduct the Small Procurement. Procurements in an amount of less than \$15,000 are not required to be posted on eMM.

When issuing a Small Procurement solicitation, the solicitation document should stipulate that only bids or proposals in an amount less than \$50,000 will be eligible for consideration, unless the certified individual conducting the Small Procurement determines that a lower ceiling is appropriate for that particular Small Procurement, in which case a ceiling in an amount certain less than \$50,000 should be stated in the Small Procurement solicitation.

All purchases of or impacting Information Technology (IT) should be pre-cleared with the MDH Office of Information Technology (OIT) to assure that any goods or services acquired are compatible with existing MDH Enterprise technology.

**E. Emergency Procurement Authority.**

Contract awards for bona fide emergency situations that meet the definition of "Emergency" in COMAR Title 21.01.02.01B(36) may be made as follows:

1. Emergency procurements are limited to acquisition of only the types of items and quantities of items necessary to avoid or to mitigate serious damage to public health, safety, and welfare.
2. The head of any Department facility with residents or outpatients, and the head of any Department program that has responsibility to place fragile or at risk populations with community based providers, may make an emergency award that is not expected to exceed \$50,000 and may further delegate some or all of this authority to appropriate facility personnel.

If appropriate personnel at the facility have not been certified by OPASS to conduct small procurements as per Section VI.A. & B of this policy, any such emergency award expected to exceed \$5,000 but not expected to exceed \$50,000 shall be reported to the Director and Deputy Director of OPASS via email or direct delivery within 3 business days of the emergency declaration.

3. For such emergency awards all the information listed in Section VI.E.4 of this

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policy shall be both retained in the agency procurement file and included in the notification provided to the OPASS Director and Deputy.

4. The Procurement Officer may award an emergency procurement contract expected to exceed \$50,000 in value with the approval of the Secretary as allowed under COMAR 21.05.06. Except as provided in Section VI.E.4 of this policy, this award and approval authority may not be further delegated.

a. Any MDH program that needs to make an emergency award expected to exceed \$50,000 in amount shall provide the following information to the Procurement Officer as soon as possible after determining that an emergency award is both justified and preferable to any other possible course of action to address the emergency situation and that information must be included in the file for that procurement to be retained at the procuring agency:

- i. The reason why it was determined that an emergency award was needed and the identity of the individual who made that determination
- ii. When it first became known to agency personnel that an emergency award was needed;
- iii. A description of how the emergency award will be limited in terms of both duration and scope to only that/those actions needed to satisfy the emergency need;
- iv. The identity of the potential vendors, including small businesses and MBEs, contacted about interest, capability and pricing concerning the emergency situation;
- vi. If award is proposed to only one vendor, the justification why this vendor is determined to be a sole source; and
- vii. A copy of any written solicitation material provided or proposed to be provided to prospective vendors.

b. For emergency awards being reported to the OPASS Director and Deputy as per VI.E.2, all the information described in VI.E.4 shall be included in the email notification.

c. If an agency has been authorized to conduct an emergency procurement as per VI.E.4, once the emergency procurement has been conducted the results must be provided to the Procurement Officer and Secretary for them to either finally approve an emergency award or to decline to do so. Pursuant to COMAR 21.05.06 and BPW Advisory 2009-2, if an emergency award is approved the requesting agency shall:

- i. Have a contract for over \$50,000 signed by the contractor and

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approved for legal sufficiency by an Assistant Attorney General assigned to the Department.

ii. Prepare a Board of Public Works Emergency Procurement Report for submission to BPW. This report must be completed and submitted within 45 days from the date of the emergency award.

iii. Publish an award notice on eMarylandMarketplace within 30 days from the date of the emergency award.

4. All procurement approval, signatory, and procurement officer authority delegated or retained in accordance with this Section VI of this policy is subject to and may be superseded by the requirements of any plan adopted by the Secretary for response to any catastrophic health emergency as set forth in Health General Article, §§18-901—18-908, Annotated Code of Maryland.

**F. Procurement Officer Designation.**

1. An individual must be authorized by the Director of OPASS, in accordance with this policy, to carry out the duties of a procurement officer. Such duties, as described at COMAR 21.01.02.01B(67) and throughout Title 21, are to formulate and issue procurement solicitations and make written determinations or findings with respect to procurements.

As described in VII.A.3, in the event the Director of OPASS position is vacant the Deputy Director or Chief of Procurement may exercise the Director's authority to designate procurement officers.

2. Procurement officer authority includes authority to approve and sign procurement contracts only if this authority has otherwise been delegated pursuant to Section VI.A and B of this policy.

**G. Delegation Limitations.**

1. The Department's authority to approve items or to delegate its approval authority to units within MDH shall not exceed the authority delegated to it by DBM, DoIT or DGS. Any procurement authority not specifically delegated to MDH by a PPU is retained by that PPU.

2. Any procurement authority delegated to the Department is deemed to be delegated to the MDH Secretary.

a. The MDH Secretary may delegate his or her authority to others within the Department, including the Director, OPASS, except as barred by the provisions of Section VI A.1.a.

b. Any procurement authority that is not specifically delegated by the Secretary is retained by the Secretary.

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3. Any procurement authority delegated to the Director, OPASS, not specifically delegated by OPASS to a procuring unit is retained by OPASS.

**VII. ROLES AND RESPONSIBILITIES.****A. Roles.**

1. **OPASS.** OPASS shall act in an advisory capacity to all personnel in MDH concerning procurement matters. OPASS shall give advice and aid to MDH procurement personnel and conduct training sessions to explain procurement processes.
2. **MBE Liaison Officer.** Generally, the MBE Liaison Officer (MBELO) shall act in an advisory capacity to MDH procurement personnel regarding MBE, VSBE and Small Business Reserve (SBR) issues. However, aside from a general advisory role, there are MBE, VSBE and SBR related aspects for which the MBE Liaison Officer will be either the final MDH authority or the final authority in conjunction with the Office of the Attorney General, Procurement Officer and the Agency Head or designee. Specifically, the MBELO shall:
  - a. Chair the Procurement Review Group (PRG) and in that capacity be involved in setting MBE goals and sub-goals and VSBE goals as well as participation in the SBR for Department procurements. As chair of the PRG the MBELO has authority to:
    - i. Schedule PRG meetings;
    - ii. Determine when a request for review of a procurement action by the PRG has been submitted with both sufficient review time and documentation to permit the PRG to make a proper analysis of the request; and
    - iii. Accept or reject any recommended MBE and/or VSBE goal for inclusion or non-inclusion of a given procurement in the SBR Program. While typically the MBE Liaison Officer will seek consensus from the PRG members concerning proposed goals, sub-goals, SBR participation, etc., in the absence of such consensus the MBELO has the authority to establish whatever goals, sub-goals and/or SBR involvement is deemed appropriate, subject only to the final authority of the Secretary or designee and legality considerations identified by the OAG.
  - b. Make an initial determination whether an offer received in response to a solicitation is in compliance with stated MBE or VSBE goals.
  - c. Monitor the achievement of MBE goals and sub-goals and VSBE goals throughout the life of MDH contracts and assist MDH units to implement remedial actions with prime contractors as needed. As a component of this function the

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MBELO will determine whether a prime contractor that is not meeting a MBE goal has made a good faith effort to meet the goal, or whether contractually specified liquidated damages should be assessed in the absence of a good faith effort.

- d. Review any request for a waiver of a MBE or VSBE goal and provide guidance to the procurement officer and Agency Head or designee concerning whether to approve or deny the request.
- e. Review any request by a bidder/offeror at the award stage of a procurement to substitute a different MBE or VSBE subcontractor than was identified with the bid/proposal submission as participating in the procurement and provide guidance to the procurement officer and Agency Head or designee concerning whether to approve or deny the requested substitution.
- f. Review any request by a prime contractor to terminate a MBE or VSBE sub-contractor and/or the substitution of a different MBE or VSBE subcontractor for one that had been working under a given procurement contract and provide guidance to the procurement officer and Agency Head or designee concerning whether to approve or deny the request.

**3. Procurement Officer:** The Director or Deputy Director of Procurement, OPASS, serves as the designated Procurement Officer for MDH for procurements exceeding \$50,000, unless the Director or Deputy Director of Procurement, OPASS, assigns that responsibility in writing to another suitable person to serve as Procurement Officer for a given procurement.

- a. If both the OPASS Director and Deputy Director of Procurement, OPASS, positions are vacant, the Procurement Officer role or the authority to designate someone else to be the procurement officer, shall be assumed by the Chief of Procurement, OPASS.
- b. The Secretary may designate an individual of appropriate training and experience other than the Director or Deputy Director, Procurement, OPASS, to serve as Procurement Officer for a specific procurement, a specific purpose under a procurement, or for a group of related procurements.

**4. Office of the Attorney General (OAG).**

- a. As required at COMAR 21.03.02, an Assistant Attorney General shall review all contracts exceeding \$50,000 in value, for form and legal sufficiency. Standard form contracts, once approved for form and legal sufficiency by an Assistant Attorney General, need not be subsequently approved if there are “no substantive modifications or alterations” to the form when used by a procuring unit.
  - i. OPASS shall, in collaboration with the office of the Attorney General, regularly review and monitor the content and use of any approved standard form.
  - ii. “No substantive modifications or alterations” generally means that

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little, if anything, is added to the form contract other than the identification of the contractor, dollar values and applicable dates. If specific contract deliverables are added to a standard form contract the contract shall be reviewed and approved for legal sufficiency prior to being awarded.

- b. For procurements expected to exceed \$50,000 (\$15,000 for b.iii, below) in value an Assistant Attorney General knowledgeable about procurement shall also:
- i. Serve on CFTs;
  - ii. Review the proposed procurement officer response to all protests and contract claims and suggest changes as appropriate;
  - iii. Review and provide advice in all instances when all bids or proposals are proposed to be rejected and a procurement cancelled; (Note: To be consistent with Section VI.A.2.e of this policy, the threshold for review of such rejections/cancellations is any procurement expected to exceed \$15,000 in value.)
  - iv. Review and provide advice for any proposed award when there are tie bids;
  - v. Review and provide advice concerning Public Information Act (PIA) requests and proposed responses, including requests by bidders/offerors or contractors for information to be deemed confidential and withheld from disclosure;
  - vi. Provide guidance when deemed appropriate by the procurement officer or CFT concerning any other procurement matter, such as responding to questions from prospective bidders/offerors, offeror cure letters, letters to unsuccessful offerors, best and final offer requests, responding to exceptions to terms and conditions, and debriefings;
  - vii. Review and provide advice in any situation when it is proposed that a bidder be rejected as being non-responsive or a bidder/offeror be rejected as not being responsible. Examples of such situations include, but are not limited to, MBE or VSBE related deficiencies, not meeting bidder/offeror minimum requirements, and exceptions to solicitation terms and conditions; and,
  - viii. Review and provide advice in any situation when a bidder/offeror alleges that it made a mistake in its bid price or financial offer.
- c. The Assistant Attorney General assigned to MDH shall review all IAs over \$50,000 in value proposed to be entered into by that Unit to ensure that such Agreements do not contain any provision that is contrary to the interests of the State of Maryland, such as agreeing to indemnify another government or binding the Department to the laws of another state.

**OFFICE OF PROCUREMENT AND SUPPORT SERVICES****5. Contract Fulfillment Teams (See Section V.B).**

- a. For procurements expected to exceed \$50,000 in value, a Contract Fulfillment Team (CFT) may be used to accomplish some or all of the procurement process as well as contract management from inception to expiration; however, normally a CFT is primarily used to assist with the drafting of specifications for competitive procurements.
- b. The CFT is comprised of members who serve concurrently for as long as deemed necessary, which may include the life of the contract. Usually arranged by the procuring unit in collaboration with OPASS, the CFT is made up of various stakeholders for a given need or activity.

**B. Responsibilities.****1. Compliance with Law and Regulations.**

All MDH personnel shall comply fully with the intent and spirit of Division II of the Maryland Annotated Code - State Finance and Procurement Article, COMAR Title 21- State Procurement Regulations, and those regulations, advisories and guidelines promulgated by BPW or those PPU's that have jurisdiction over MDH. No statement in this policy should be construed as granting an exemption or deviation from any of the requirements stated in the documents cited here. All MDH personnel involved in the procurement process are expected to become knowledgeable about procurement regulations and to carry out their duties according to State procurement law and regulations.

**2. Central Files, Control Numbers and PAARs.**

OPASS shall maintain in a secured fashion the required central files for procurements approved by or through OPASS, affix to approved contracts a control number as outlined in the ADPICS Coding Instructions Manual, and shall collect and forward the MDH "Procurement Agency Activity Report" (PAAR).

PAARs shall be submitted as per COMAR 21.02.01.05 and as directed in the agency plan approved by the DBM.

**3. Public Information Act Requests and Custodian of Files.**

OPASS, in its responsibility to maintain central procurement files, shall be the custodian of records for procurements over \$50,000 in value, (or a lesser value for Units with lower delegated procurement authority) for purposes of responding to information requests pursuant to the Maryland Public Information Act (PIA), General Provisions Article, §§4-101—4-601, Annotated Code of Maryland. MDH program units shall be custodians of programmatic and substantive records generated under a procurement contract and procurement records for procurements that do not exceed the lesser of \$50,000 in value or a Unit's level of delegation, and shall be responsible for responding to PIA information requests for such records in consultation with OPASS.

**4. Standard Forms and Resource Guide.**

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- a. OPASS shall periodically review and revise the standard procurement forms used by MDH to ensure that all language, terms and conditions comply with Maryland law, regulation, and policy and shall make these forms available to MDH staff on the MDH Intranet.
- b. OPASS shall establish procurement procedures for MDH subject to all laws, regulations and procurement policy, including this policy. These procedures shall be made available to MDH staff in a Resource Guide published on the MDH Intranet.

**5. Public Notice.****a. SOLICITATIONS.**

- i. The OPASS Contract Officer conducting a procurement shall cause to be posted to eMM for a period of not less than 20 days solicitations where the amount to be offered is reasonably expected to exceed \$50,000, as directed by COMAR 21.05.02.04. A longer period of time should be permitted when the solicitation of goods or services may require elaborate response. <https://emaryland.buyspeed.com/bsol/>
- ii. Solicitations posted to eMM should also be posted on the MDH internet website under "Procurement Opportunities." <http://www.DHMH.maryland.gov/procumnt/Pages/Procopps.aspx>
- iii. When posting solicitation notices on eMM the notice should be filed under all appropriate NIGP (National Institute of Governmental Purchasing) codes to help ensure an adequate response from bidders/offerors.
- iv. To help assure adequate competition, the contract officer should assure that a program representative has performed research to identify prospective vendors and has directly solicited those identified.
- v. In addition to the required public notice described in Section VII.B.5.a.i-iv, procurement notices may be posted on a physical bid board.

**b. AWARD NOTICES.**

When the amount of a procurement award exceeds \$50,000 in value, the contract officer conducting the procurement shall cause the award notice to be posted to the eMM procurement portal within 30 days of contract award as directed by COMAR 21.05.02.17. <https://emaryland.buyspeed.com/bsol/> Proof of posting of contract award on eMM is required to be included in the procurement file before procurement close-out of the procurement file.

**6. Training.**

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OPASS shall provide ongoing procurement training for MDH staff to ensure that those involved in MDH procurements maintain an acceptable level of competence in all aspects of the procurement process.

**7. Staying Current with Changes.**

OPASS shall remain cognizant of all additions, deletions and changes to procurement law, regulation and policy as promulgated by the Maryland General Assembly, BPW, DBM, DoIT and DGS, and shall make such information known to MDH personnel.

**VIII. SOCIO-ECONOMIC ISSUES.**

All Department units shall exert all reasonable efforts to uphold the socio-economic policies of the State, as follows.

**A. MBE.**

MDH is committed to make all reasonable efforts to meet the MBE goal of the State, which means that 29 percent of the total dollar value of MDH should go to MBEs, directly or through sub-contracting.

1. All MDH procurements expected to exceed \$15,000 in cost or value (Small Procurement Category III level) shall be examined for the establishment of an appropriate MBE goal and sub-goals. For competitive procurements, including as per COMAR 21.05.07.06 A (2), small procurements expected to exceed \$5,000, identification of MBEs is to be directly solicited.
2. Procurements expected to exceed \$100,000 in value shall be subject to Procurement Review Group (PRG) approval of the proposed MBE goal and sub-goals, if any, including the absence of a goal or sub-goals.
3. All PRG submissions shall be on the forms required by the PRG and follow the procedures established by the PRG.

At any time, guidance concerning MBE matters may be sought from the MBELO, OAG and OPASS. Written MBE guidance may also be obtained by reviewing the Board of Public Works Advisories 1996-1; 2001-1; and 2003-1 and the website of the Governor's Office of Small, Minority & Women Business Affairs (GOSBA f/k/a GOMA) at this web address:

<http://goma.maryland.gov/Pages/Reporting-Tool-MBE.aspx>

The questionnaire contained in BPW Advisory 2001-2 is especially helpful in making MBE goal determinations.

The MBE wording and forms contained in the MDH standard procurement templates are the same as those contained in the above referenced Advisories and website.

**OFFICE OF PROCUREMENT AND SUPPORT SERVICES****B. Small Businesses.**

MDH is committed to make all reasonable efforts to meet the small business award goal of the State, which means that 15% of the total dollar value of MDH contracts should go directly to small businesses, including by directly soliciting small businesses, designating specific procurements to be restricted so that only a small business may be selected for award under the Small Business Reserve Program (SBR), or by giving a Small Business Preference as per COMAR 21.11.01.05. MDH procurements shall be initially deemed SBR, subject to exemption when it is determined that there is not a sufficient number of small businesses capable and available to perform desired work or provide needed commodities to afford the likelihood of robust competition.

1. Small Business Reserve (SBR) (COMAR 21.11.01.06)
  - a. All MDH procurements expected to exceed \$50,000 in cost or value shall be examined to determine if the procurement is appropriate to be reserved only for small businesses in accordance with COMAR 21.11.01.06.
  - b. Procurements expected to exceed \$100,000 in value shall be subject to PRG approval of the proposed inclusion or non-inclusion as a SBR procurement.
  - c. All PRG submissions shall be on the forms required by the PRG and follow the procedures established by the PRG.

At any time, guidance concerning SBR matters may be sought from the MBEL, OAG and OPASS. Written SBR guidance may also be obtained by reviewing the Board of Public Works Advisory 2005-1 and the website of the Governor's Office of Small, Minority & Women Business Affairs at this web address:  
<http://goma.maryland.gov/Pages/sbr-Program.aspx>

2. Small Business Preference (COMAR 21.11.01.05)

Any procurement conducted by MDH for commodities, supplies or maintenance under delegation from DGS that is conducted by the Competitive Sealed Bidding procurement method may apply a price preference for Small Businesses that are vying for an award versus non-Small Businesses.

For the Preference to apply, the Invitation for Bids (IFB) must specifically state that a Small Business Preference will apply and must state the percentage preference that will be given to a Small Business versus a non-Small Business.

- a. Up to a 5 percent preference may be granted to a Small Business.
- b. Up to a 7 percent preference may be granted to a Veteran-Owned Small Business.
- c. Up to an 8 percent preference may be granted to a Disabled Veteran-Owned Small Business.

The actual preference contained in an IFB can be any whole percentage or fraction of a

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percentage above 0 percent up to the maximum percentages listed above; e.g., the preference can be 0.5 percent, 1 percent, 2.5 percent, 5 percent, etc.

Also see BPW Advisory 2009-3 for more guidance on the small business Preference program.

**C. Veteran-Owned Small Business Enterprise (VSBE) (21.11.13)**

MDH is committed to make all reasonable efforts to meet the VSBE goal of the State, which means that 1 percent of the total dollar value of MDH contracts should go to VSBEs, directly or through sub-contracting.

1. All MDH procurements expected to exceed \$50,000 in value shall be examined for the direct solicitation of VSBEs and/or the establishment of an appropriate VSBE goal.
2. Procurements expected to exceed \$100,000 in value shall be subject to Procurement Review Group approval of the proposed VSBE goal, including the absence of a goal.
3. All PRG submissions shall be on the forms required by the PRG and follow the procedures established by the PRG.

OPASS shall assist the setting of VSBE goals.

For more guidance on the Veteran-owned Small Business Enterprise program see BPW Advisory 2012-1 and this web site for the Center for Verification and Evaluation of the U.S. Department of Veteran's Affairs: <http://www.va.gov/osdbu>.

**D. Preferred Providers (COMAR 21.11.05.07).**

As required by COMAR 21.11.05.07, MDH is required to make all appropriate purchases of goods and services from Maryland Correctional Enterprises (MCE), Blind Industries and Services of Maryland (BISM) and the Maryland Employment Works Program (MD Works), in this same order of preference. Purchases from these preferred providers shall be done in lieu of conducting a competitive procurement for a needed good or service unless a waiver is obtained from the appropriate provider or from the appropriate Pricing Committee overseen by DGS. OPASS will provide guidance concerning preferred provider issues.

**IX. PROCESS**

All solicitations, IAs, contracts, contract modifications and option renewals shall be submitted to OPASS for review and approval, subject to any OPASS required revisions, unless approval authority has been delegated to another entity, for example, for Small Procurements. If a particular procurement action requires the approval of a PPU or BPW, OPASS shall forward the item to the appropriate approval authority once all revisions required by OPASS have been made. MDH shall not issue solicitations or award contracts without approval by OPASS and the appropriate PPU if required.

**OFFICE OF PROCUREMENT AND SUPPORT SERVICES****X. ALTERNATIVES TO PROCURING****A USE OF STATE CONTRACTS.**

DGS, DoIT and DBM all have various statewide or master contracts that agencies such as MDH may use, or in the case of DGS, are usually required to use.

Before conducting a procurement, including a Small Procurement or simply making a purchase using a CPC, MDH employees should determine if there is a State contract from which the good or service can be obtained. Because statewide contracts seek to aggregate the purchasing power of all State agencies, the prices available under these contracts may be lower than can be obtained by making individual, one-at-a-time purchases. The delivery times and other aspects of such contracts may also be better. Furthermore, if there are performance problems with such contracts, often the contract manager for each respective contract within DGS, DoIT or DBM will become involved to help with resolution.

**B. INTERGOVERNMENTAL COOPERATIVE PURCHASING (IGCP).**

In accordance with COMAR 21.05.09 PPUs are permitted to use the contracts of other governments, including the Federal government, under certain circumstances. While MDH is not a PPU, each of the three procurement control agencies with authority over MDH, namely, DGS, DBM and DoIT, may exercise IGCP to agencies such as MDH within the scope of their control, i.e., these control agencies may authorize MDH to use the contract of another government to participate in IGCP even though MDH is not a PPU. MDH procurement personnel are encouraged to become familiar with the contracts of local governments in Maryland, local governments in other states, other states themselves and the federal government to see if the use of such piggyback contracts is permitted by the contract terms. Before entering into an IGCP, the procurement officer must determine that action to be in the best interest of the State, considering cost benefits and administrative efficiency. In addition, the Secretary or Secretary's designee must approve the use of an IGCP and the controlling PPU must post notice of the award on eMM.

**XI. REFERENCES**

- Annotated Code of Maryland, State Finance and Procurement Article, Division II, Titles 11—19.  
[www.lexisnexis.com/hottopics/mdcode/](http://www.lexisnexis.com/hottopics/mdcode/)
- COMAR Title 21 State Procurement Regulations  
[www.dsd.state.md.us/COMAR/ComarHome.html](http://www.dsd.state.md.us/COMAR/ComarHome.html)
- Board of Public Works Advisories  
[bpw.maryland.gov/Pages/advisories.aspx](http://bpw.maryland.gov/Pages/advisories.aspx)
- Maryland Public Information Act Manual (PIA), Office of the Attorney General,

[www.oag.state.md.us/Opengov/pia.htm](http://www.oag.state.md.us/Opengov/pia.htm)

- e-Maryland Marketplace Bid Board  
[emaryland.buyspeed.com/bsol/](http://emaryland.buyspeed.com/bsol/)
- MDH OPASS Procurement Opportunities Bid Board  
[www.MDH.maryland.gov/procumnt/Pages/Procopps.aspx](http://www.MDH.maryland.gov/procumnt/Pages/Procopps.aspx)
- MDH OPASS Standard Procurement Forms  
[https://health.maryland.gov/Pages/sf\\_dcpf.aspx](https://health.maryland.gov/Pages/sf_dcpf.aspx)

**APPROVED:**

  
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Dennis Schrader, Secretary, MDH

**October 1, 2017**  
**Effective Date**