

DHMH POLICY

<http://dhmh.maryland.gov/SitePages/op02.aspx>

OFFICE OF PROCUREMENT AND SUPPORT SERVICES -

DHMH POLICY 02.12.01

Version Effective: September 27, 2016

DHMH 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). The BPW has promulgated regulations that provide for delegation of authority to certain Primary Procurement Units (PPUs) and allows them to further delegate authority to procuring units. These regulations also define procurement methods and procedures; provide specific clauses and provisions for solicitations and procurement contracts; outline remedies and socioeconomic policies; and stipulate requirements for advertising and reporting procurement activity. The BPW also issues Advisories that have the effect of State policy.

This policy implements Maryland procurement law, regulations and policy as they apply to the Department of Health and Mental Hygiene (DHMH) and further establishes authority and delegation of authority within DHMH.

This policy:

- Provides exemptions for certain DHMH units and certain types of agreements;
- Defines the duties of a Procurement Officer and the roles of the Office of Procurement and Support Services (OPASS), the MBE Liaison Officer and the Office of the Attorney General (OAG);
- Describes the use of Contract Fulfillment Teams; and
- Assigns to OPASS certain responsibilities for creating and sustaining procurement documents and knowledge bases within DHMH, 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 overall power and authority over the majority of procurement matters, including those that affect DHMH, with the BPW, a body comprised of the Governor, the Comptroller and the Treasurer.

Department of Health & Mental Hygiene

OFFICE OF REGULATION AND POLICY COORDINATION (ORPC)

201 West Preston Street - Room 512 - Baltimore Maryland 21201-2301

Phone 410 767-6499 FAX 410 767-6483

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

The law requires the BPW to promulgate State procurement regulations, and permits the 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 DHHM, including the authority to promulgate State procurement regulations pertaining to their area of expertise and control. The law also permits the BPW to establish policy by issuing Advisories.

Based upon the authority provided by the State Finance and Procurement Article, Title 21, State Procurement Regulations, Code of Maryland Regulations (COMAR), 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 authority from the DBM, DoIT and the DGS (Primary Procurement Units) to procuring agencies such as DHHM. The delegation of authority to a procuring agency is predicated on the agency following certain procedures. The procuring agency must adhere to certain reporting and contract review requirements. This policy implements procurement law and regulations as they apply to DHHM and further establishes delegated authority within the Department.

This version supersedes DHHM 02.12.01 which was effective May 12, 2014. In addition to expanding the scope and content, this version: 1) Fixes broken links; 2) Makes changes due to changes in procurement law or regulation; and 3) Updates names due to administrative changes.

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/
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>

B. Any authority to approve (See Section III.D.) **procurement contracts**, contract modifications or options delegated to DHHM by DBM, DGS and DoIT as allowed in COMAR 21.02.03, 21.02.05 and 21.02.01.04.J, respectively, shall be in writing, and is held by the Secretary of DHHM or, per Section III.B.1, a designee. This includes authority to purchase commodities and execute maintenance contracts delegated by DGS to facilities that are part of DHHM and accountable to the Secretary of DHHM, including but not limited to all day and residential facilities, including hospitals and schools, owned and/or operated by the Department.

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

1. Any authority to approve procurement contracts delegated to the Secretary of DHHM may be re-delegated, in whole or in part, in writing.
- C. The authority to approve inter-agency or inter-governmental agreements (See Section III D) which are exempt from the applicability of COMAR Title 21, is held by the Secretary of DHHM or, per Section III.C.1., a designee.
1. The authority to approve contracts, Memorandums of Understanding (MOUs), or like business agreements held by the Secretary of DHHM may be delegated, in whole or in part, in writing.
- D. "Approve" in the context of this section (Section III. Authority) means:
1. The authority to sign contracts, contract modifications, MOUs, or like 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 the 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 Agency Head, Unit Head or Reviewing Authority 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 a MBE or VSBE goal; the approval of a request from a prime contractor to change a MBE subcontractor.
 3. Signing any Determination which COMAR Title 21 requires to be co-signed by the Agency Head, Unit Head or Reviewing Authority, such as, but not limited to, a decision to conduct a specific procurement by the competitive sealed proposals, sole source or emergency procurement method or consent to request any Best and Final Offer after the first under a competitive sealed proposals procurement.

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

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

1. Expenditures by any DHHM unit under a procurement contract;
2. All procurements by a DHHM unit on behalf of another DHHM unit, other State or governmental agency, or other entity;
3. All MOUs between any DHHM unit and another government or agency thereof;

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

4. All procurements by a DHHM unit, 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 DHHM, are to be provided for the benefit of State officials; State employees; students at a State facility, including a school, hospital, or institution; or clients or patients at a State hospital or State institution;
5. Any revenue producing contract that is for a purpose other than as described in Section IV.A.4. 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
6. 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 DHHM units:
 - Maryland Community Health Resources Commission
 - Maryland Health Care Commission
 - Maryland Health Services Cost Review Commission

Organizationally these 3 Commissions are located within DHHM 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 the Board of Public Works and the 3 procurement Control Authorities – DBM, DGS and DoIT.

To the extent, however, that any of these Commissions is authorized in 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 DHHM units:
 - 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.)

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

- 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.)

- 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 to either 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 local health department would have to fully abide by the State procurement regulations and this policy.

If local health departments 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 DHHM using a contract of another government, in the context of this Section IV.B.4 the local health department 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), shall 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. Computer-based technology (e.g. e-mail or video-conferencing);
 - b. Telephone conferencing; or,

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

c. In-person meeting.

Typically a CFT would be 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 would be one or more persons from the unit 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 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 Department of Health and Mental Hygiene (DHHM). 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. **“Memorandum Of Understanding (MOU)”** as used in this policy and any associated procedures means an **Inter-Governmental Agreement** (agreement between DHHM and a political subdivision of the State or an agency thereof, a government, including the government of another state, the United States or of another country, an agency or a political subdivision of a government, or a bi-state, multi-state, bi-county or multi-county governmental agency) and/or an **Inter-Agency Agreement** (agreement between DHHM and another agency of the Executive Branch of Maryland State Government).
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(l), 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 the Department: the Department of General Services (DGS), Department of Budget and Management (DBM), or 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).

OFFICE OF PROCUREMENT AND SUPPORT SERVICES**VI. DELEGATION****A. Approval Authority.**

1. The Director, Office of Procurement and Support Services (OPASS) is delegated by the Secretary, DHHM, to exercise the Secretary's authority to review and, except as described in VI.A.1.i, Approve procurement contracts. 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.

a. Exceptions.

i. This delegation authority does not extend to those circumstances when the Agency Head, Unit Head, Reviewing Authority or designee must render an approval *in addition to* the approval of the procurement officer, since the same individual may not act in the capacity of both a procurement officer and agency head designee.

ii. The roles of the Agency Head, Unit Head, Reviewing Authority designee and 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 program units 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 will be monitored on an ongoing basis by OPASS to assure continued adherence to the procurement law, regulations and policy of the State and DHHM;

d. Delegation of approval authority may be withdrawn by the Director of OPASS whenever deemed appropriate.

e. Any such delegation will specifically **EXCLUDE the following:**

i. Responding to Protests or Contract Claims;

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

- 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 \$25,000.
 - iv. Approval of any MBE or VSBE waiver request;
 - v. Approval of a change of MBE or VSBE subcontractor.
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 \$25,000 or less or for MOUs up to \$200,000, but may, depending on the circumstances, be for any other amount up to the limit of authority delegated to DHHM by the applicable Primary Procurement Unit and further delegated by the Secretary to the OPASS Director.

B. Signatory Authority.

1. The Secretary may delegate authority to sign contracts and MOUs with a value greater than \$200,000, thereby binding the Department, to a Deputy Secretary or other senior management official by a Memorandum of Delegation.
2. The Secretary may delegate authority to sign contracts and MOUs with a value of \$200,000 or less, thereby binding the Department, to the Director, OPASS by a Memorandum of Delegation.
3. The Director of OPASS may re-delegate signatory authority for contracts or MOU's with a value of \$200,000 or less, thereby binding the Department, to 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 DHHM 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.

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

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

D. 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. The head of any Department facility with residents or outpatients may make an emergency award that is not expected to exceed \$25,000 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 \$25,000 shall be reported to the Director and Deputy Director of OPASS via email or direct delivery within 3 business days of the emergency declaration.

- a. When making any emergency award the following 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.
 - ii. Who made the emergency determination.
 - iii. When it first became known to agency personnel that an emergency award was needed.
 - iv. A description of how the emergency award was limited in terms of both duration and scope to only that/those actions needed to satisfy the emergency need.
 - v. A copy of any written solicitation material provided to perspective vendors or a copy of any written script if responses were requested orally.
 - vi. Whether more than one potential vendor was contacted about interest, capability and pricing concerning the emergency situation, and, if so, copies of the responses, including declinations to respond.

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

vii. If award is proposed to only one vendor without any attempt for competition, the justification why this vendor is determined to be a sole source.

viii. If more than one response was received, why the award was made to the vendor so selected.

b. For emergency awards being reported to the OPASS Director and Deputy as per VI.D.1, all the information described in VI.D.1.a shall be included in the email notification.

2. 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 expected to exceed \$5,000 but not expected to exceed \$25,000 for the placement of an individual at risk of harm, and may further delegate some or all of this authority to appropriate program personnel.

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

For such emergency awards all the information listed in Section VI.D.1.a of this policy shall be both retained in the agency procurement file and included in the notification provided to the OPASS Director and Deputy.

3. The Procurement Officer may award an emergency procurement contract expected to exceed \$25,000 in value with the approval of the Secretary as allowed under COMAR 21.05.06. Except as provided in Section VI.D.4 of this policy, this award and approval authority may not be further delegated.

a. Except as described in Section VI.D.4., any DHHM unit that wishes the DBM Procurement Officer and Secretary to make an emergency award expected to exceed \$25,000 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:

i. The reason why it was determined that an emergency award was needed;

ii. Who made the emergency determination;

iii. When it first became known to agency personnel that an emergency award was needed;

iv. 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; and

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

- v. Whether more than one potential vendor is proposed to be contacted about interest, capability and pricing concerning the emergency situation.
 - b. If award is proposed to only one vendor, the justification why this vendor is determined to be a sole source.
 - c. A copy of any written solicitation material proposed to be provided to perspective vendors.
 - d. If permission for an emergency procurement over \$25,000 is approved by the Procurement Officer and Secretary the requesting agency will be notified:
 - i. Of any required changes to the duration, scope, written solicitation document, list or means of vendors to be solicited for responses.
 - ii. Whether the agency can proceed with conducting the procurement or if OPASS will do so.
 - e. If an agency has been authorized as per VI.D.3.d.ii to conduct an emergency procurement, 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. If an emergency award is approved the requesting agency shall:
 - i. Have a standard contract for over \$25,000 signed by the contractor and 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 the BPW. This report must be completed and submitted as required by BPW Advisory 2009-2 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.

E. 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 procurement contracts, administer procurement contracts, and make written

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

determinations or findings with respect to procurement contracts.

- a. 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.

F. Delegation Limitations.

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

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

- a. The Secretary, DHHM may delegate his/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.

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.** The OPASS shall act in an advisory capacity to all personnel in DHHM concerning procurement matters. The OPASS shall give advice and aid to all personnel and conduct training sessions, as necessary, to explain the procurement process.
<http://dhhm.maryland.gov/opass/Pages/Home.aspx>
2. **MBE Liaison Officer.** Generally, the MBE Liaison Officer (MBELO) shall act in an advisory capacity to all personnel in DHHM regarding MBE, VSBE and 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 DHHM authority or the final authority in conjunction with the Office of the Attorney General, Procurement Officer and/or the Agency Head or designee. Specifically, the MBE Liaison Officer shall:

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

- a. Chair the Procurement Review Group (PRG) and in that capacity be involved in setting MBE goals and sub-goals and VSBE goals and participation in the SBR for Department procurements. As chair of the PRG the MBE Liaison Officer has the 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.
 - iii. Accept or reject any recommended MBE and/or VSBE goal from a requesting Department unit or the 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. Monitor the achievement of MBE goals and sub-goals and VSBE goals throughout the life of Department contracts and assist Department units to implement remedial actions with prime contractors as needed. As a component of this function the 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.
- c. 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.
- d. 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.
- e. 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 Deputy Director- Procurement, OPASS is designated as the Procurement Officer for DHHM for procurements exceeding \$25,000, except that the OPASS Director may act as the procurement officer for any given procurement

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

or group of procurements and may, in writing, approve someone other than the Deputy Director-Procurement to be the procurement officer for a given procurement.

- a. If the OPASS Director position is vacant, the Deputy Director- Procurement, OPASS may approve another individual to be the procurement officer for a given procurement.
- b. If both the OPASS Director and Deputy Director- 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.
- c. The Secretary may designate an individual of appropriate training and experience other than the 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 \$25,000 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. The 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 little, if anything, is added to the form contract other than the name, address, etc. 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 \$25,000 (\$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

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

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 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 a Department Unit shall review all Inter-**Governmental** Agreements over \$25,000 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.

5. Contract Fulfillment Teams (See Section V.B).

a. For procurements expected to exceed \$50,000 in value, a Contract Fulfillment Team (CFT or Team) may be used to accomplish some or all of the procurement process, including contract management, from inception to expiration. Normally, however, a CFT is primarily used to assist with the drafting of specifications for competitive procurements.

b. A Team is comprised of core "Primary and Secondary" members which serve concurrently for as long as deemed necessary, including the life of the contract. Usually arranged by the procuring unit in collaboration with the Office of Procurement and Support Services (OPASS), the CFT is made up of various stakeholders for a given need or activity.

OFFICE OF PROCUREMENT AND SUPPORT SERVICES**B. Responsibilities.****1. Compliance with Law and Regulations.**

All DHHM 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 the BPW or those PPU's that have jurisdiction over DHHM. (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 personnel of DHHM 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.

The OPASS shall maintain 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 "Procurement Agency Activity Report " (PAAR) for DHHM. 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.

The OPASS, in its responsibility to maintain central procurement files, shall be the custodian of records for procurements over \$25,000 in value, (or a lesser value for Units with lower delegated procurement authority) for purposes of information requests pursuant to the Maryland Public Information Act (PIA), General Provisions Article, §§4-101—4-601, Annotated Code of Maryland. DHHM program units shall be custodians of programmatic and substantive records generated under a procurement contract and procurement records for procurements that don't exceed the lower of, \$25,000 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 the OPASS.

<http://www.oag.state.md.us/Opengov/pia.htm>

4. Standard Forms and Resource Guide.

a. The OPASS shall review and revise the standard procurement forms used by DHHM as necessary, but no less than annually to ensure that all language, terms and conditions comply with Maryland law, regulation, and policy. The OPASS shall further make these forms available to DHHM staff on the DHHM Intranet.

b. The OPASS shall establish procurement procedures for DHHM subject to all laws, regulations and procurement policy, including this policy. These procedures shall be made available to DHHM staff in a Resource Guide published on the DHHM Intranet.

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

5. Public Notice.

a. SOLICITATIONS.

i. The Director, OPASS or designee and the Director (CEO) or Administrator (COO) or designee of each DHHM administration/facility with delegated approval, signatory or procurement officer authority pursuant to Section VI of this policy, shall ensure that public notice of solicitations for State contracts within their sphere of influence for which the contract amount is reasonably expected to be greater than \$10,000 be posted to the DHHM Internet site titled "Current Procurement Opportunities". <http://www.dhmm.maryland.gov/procumnt/Pages/Procopps.aspx>

ii. The Director, OPASS or designee, and the Director (CEO) or Administrator (COO) or designee of each DHHM administration/facility with delegated approval, signature or procurement officer authority pursuant to Section VI. of this policy, shall cause to be posted, solicitations where the amount is reasonably expected to be greater than \$15,000 to the procurement portal *eMarylandMarketplace* as directed by COMAR 21.05.07.06B(4) (\$15,000 - \$25,000) and COMAR 21.05.02.04 (over \$25,000). <https://emaryland.buyspeed.com/bsol/>

iii. When posting solicitation notices on eMM the notice should be filed under **all** appropriate NAICS (North American Industrial Classification System) codes to help ensure an adequate response from bidders/offerors. Moreover, if it is suspected or apparent that vendors who are viable bidders/offerors for a given procurement may not be registered on eMM or if the available NAICS codes do not seem to adequately apply to a given procurement, direct notification of prospective bidders/offerors of the procurement opportunity should be done, ***in addition to the eMM notice.***

iv. In addition to the required public notice described in Section VII.B.5.a.i—iii, to help assure adequate competition procurement notices may be posted on a physical "bid board", on the unit's general web site and/or, in particular, ***directly sent to prospective bidders/offerors.***

v. As described in VIII.A.1, direct solicitation of MBEs shall be done for all competitive procurements expected to exceed \$5,000 in value.

b. AWARD NOTICES.

When the amount of a procurement award exceeds \$25,000 in value, the Director, OPASS or designee shall cause an award notice to be posted to the procurement portal *eMarylandMarketplace* as directed by COMAR 21.05.02.04. <https://emaryland.buyspeed.com/bsol/>

OFFICE OF PROCUREMENT AND SUPPORT SERVICES**6. Training.**

The OPASS shall provide, as needed, on-going procurement training for DHHM staff to ensure that those involved maintain an acceptable level of competence in all aspects of the procurement process.

7. Staying Current with Changes.

The 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 DHHM 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.

The Department 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 Department contracts should go to MBEs, directly or through sub-contracting.

1. All DHHM 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 to be directly solicited.
2. Procurements expected to exceed \$100,000 in value shall be subject to Procurement Review Group approval of the proposed MBE goal and sub-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.

At any time guidance concerning MBE matters may be sought from the DHHM MBE Liaison Officer, the OAG and/or OPASS. Written MBE guidance may also be obtained by reviewing the Board of Public Works Advisories 1996-1; 2001-1; 2001-2; and 2003-1 and the website of the Governor's Office of Minority Affairs 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 DHHM 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.**

The Department is committed to make all reasonable efforts to meet the small business award goal of the State, which means that 10% of the total dollar value of Department 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.

1. Small Business Reserve (SBR) (COMAR 21.11.01.06)
 - a. All DHHM procurements expected to exceed \$25,000 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 Procurement Review Group 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 DHHM MBE Liaison Officer, the OAG and/or 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 Minority 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 a Department unit for commodities, supplies or maintenance under delegation from the Department of General Services (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

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

percentage above 0 percent up 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)

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

1. All DHHM procurements expected to exceed \$25,000 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.

As required, the OPASS shall assist the requesting unit or involved CFT concerning VSBE goal setting.

For more guidance on the Veteran-owned Small Business Enterprise program see BPW Advisory 2012-1 and this web site for 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, Department units are 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 the Department of General Services. As needed, OPASS will provide guidance concerning preferred provider issues.

IX PROCESS

Unless approval has been delegated to a Department Unit, all solicitations, MOUs, contracts and contract modifications and option renewals shall be submitted to OPASS for review and approval, subject to any OPASS required revisions. If a particular procurement action requires the approval of a PPU or the BPW, OPASS shall forward the item to the appropriate approval authority once all

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

revisions required by OPASS have been made. Department units shall not issue solicitations or award contracts without approval by OPASS and, if required, the appropriate PPU.

X. ALTERNATIVES TO PROCURING**A USE OF STATE CONTRACTS.**

DGS, DoIT and DBM all have various statewide or master contracts that agencies such as DHHM 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, DHHM employees should determine if there is a State contract from which the good or service can be obtained. Since such statewide contracts seek to aggregate the purchasing power of all State agencies, usually the prices available under these contracts are 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. Moreover, 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 DHHM is not a PPU, each of the three Control Authorities with authority over DHHM – DGS, DBM and DoIT – are, and may extend their IGCP authority to using agencies such as DHHM within the scope of their control. i.e., these Control Authorities may authorize DHHM to use the contract of another government to participate in intergovernmental cooperative purchasing even though DHHM is not a PPU. DHHM units 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 contracts is permitted by the terms of the contracts themselves and if the prices and other aspects of these contracts are perceived as being better than could be obtained through a standalone procurement, not to mention the savings in time and effort from not having to do a procurement.

XI. REFERENCES

- Annotated Code of Maryland, State Finance and Procurement Article, Division II, Titles 11—19.
www.lexisnexis.com/hottopics/mdcode/
- COMAR Title 21 State Procurement Regulations
<http://www.dsd.state.md.us/COMAR/ComarHome.html>

OFFICE OF PROCUREMENT AND SUPPORT SERVICES

- Board of Public Works Advisories
<http://bpw.maryland.gov/Pages/advisories.aspx>
- Maryland Public Information Act Manual (PIA), Office of the Attorney General,
<http://www.oag.state.md.us/Opengov/pia.htm>
- e-Maryland Marketplace Bid Board
<https://emaryland.buyspeed.com/bsol/>
- DHHM OPASS Procurement Opportunities Bid Board
<http://www.dhhm.maryland.gov/procumnt/Pages/Procopps.aspx>
- DHHM OPASS Standard Procurement Forms
http://dhhm.maryland.gov/Pages/sf_dcpf.aspx

APPROVED:

Van T. Mitchell, Secretary, DHHM

September 27, 2016
Effective Date