



## Best Practices

### Small Business Reserve (SBR) Executive Order 01.01.2021.01 *Implementation Guidelines*

#### **BACKGROUND**

Maryland created the Small Business Reserve (SBR) Program to allow small businesses to compete against other small businesses instead of larger, more established companies for contract awards. Once a solicitation has been designated as an “SBR” procurement, an award can only be made to a certified small business identified in the SBR directory. The SBR Program is a race- and gender-neutral prime contracting program. To participate, the vendor must be a for-profit business that meets the established small business requirements. The self-certification process is done through eMaryland Marketplace Advantage (eMMA). See Maryland State Finance and Procurement Code Annotated (SFP) Title 14, Subtitle 5; and COMAR 21.11.01.06.

#### **EXECUTIVE ORDER**

[Executive Order 01.01.2021.01, Increasing Small-Business Participation in State Procurements](#)

*The DGS Office of State Procurement (OSP) is assisting the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA) in establishing procedures and guidelines for the efficient exemption of procurements from the SBR Program and as may otherwise be appropriate for the implementation and administration of the Executive Order.*

#### **DEFINITIONS**

**Certified Small Business.** A small business that has registered and is certified through eMMA and identified as a vendor in the Small Business Reserve Program Directory and as defined in COMAR 21.11.01.01B(1).

**Indefinite Quantity (IDQ) Contract.** A contract for an indefinite amount of goods or labor to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type. (COMAR 21.06.03.06)

**Master Contract.** A set of master contractor agreement awards in which only those master contractors with awards in that set may compete for secondary competition awards for a specific type of service, supply, or commodity. (COMAR 21.05.13.01)

**Noncompetitive Negotiated Procurement of Human, Social, or Educational Services.** The procurement is for human, social, or educational services to be provided *directly to individuals* with disabilities, individuals who are aged, indigent, disadvantaged, unemployed, mentally or physically ill, or displaced or minors. (SFP 13-106; COMAR 21.05.12.04) Examples include group foster care services for children or adults, residential rehabilitation services, therapeutic group home services for children and adolescents, or community rehabilitation services.

**Secondary Competition.** A procurement process in which only approved master contractors may compete to provide the services, supplies, or commodities under the procurement. (COMAR

21.05.13.01) Secondary competition is solicited in one of three forms, as defined for use in a given Master Contract: (1) Task Order Request for Proposal (TORFP); (2) Purchase Order Request for Proposal (PORFP); or (3) Request for Resumes (RFR).

**Statewide Contract.** A contract for goods or services procured by a control agency on behalf of the entire State of Maryland to obtain economies of scale in pricing or other value to the State. Purchases are made directly by the using agencies or entities.

**Term Contract.** A standing blanket order agreement between contractor and the State covering a specific time period through which the State may obtain a specified or unspecified amount of a supply, service, or maintenance. [COMAR 21.01.02(90)] Examples include office supplies and MRO purchases.

### **EXEMPTIONS & WAIVERS TO AUTOMATIC SBR PROGRAM DESIGNATION**

The following exemptions or waivers apply to automatic designation of the SBR Program on contracts/purchases valued between \$50,000 and \$500,000:

#### **Exemptions:**

- Purchases or work orders made from Statewide IDQ [including architectural-engineering (A-E)] or term contracts with one contractor
- Purchases or work orders made from Statewide IDQ [including architectural-engineering (A-E)] or term contracts with multiple contractors that receive work orders by right of first refusal or round robin, where there is no secondary competition
- Sole source contracts for proprietary goods or services
- Procurement contracts with Preferred Providers
- Procurement involves federal dollars, where inclusion in the SBR Program conflicts with federal law or grant provisions
- Procurement contracts from noncompetitive negotiation for certain human, social, or educational services

#### **Waivers:**

- An eMMA search of small businesses registered to participate in the SBR Program as well as a search of other available small business resources and databases has yielded the identification of less than three (3) eligible small businesses [as defined in COMAR 21.01.02.01B(80)]
- A formal waiver request, that does not meet prescribed exemptions, granted by GOSBA

### **PROCEDURES FOR SBR DESIGNATION FOR COMPETITIVE PROCUREMENTS & SECONDARY COMPETITION ON STATEWIDE & MASTER CONTRACTS**

For Competitive Procurements or Statewide and Master Contracts with secondary competition, designation to the SBR Program is required, unless a waiver or exemption is determined appropriate. In making this determination, the agency must research and confirm if adequate competition exists. A Procurement Review Group (PRG) evaluation for an SBR Program procurement designation must be conducted using the available “PRG Evaluation - SBR Program Designation Worksheet” form.

If there are at least three (3) small businesses that ***are capable of performing the services or providing the required products***, the procurement or secondary competition should be designated as an SBR Program procurement. *(These three small businesses may not necessarily be certified in eMMA at the time of solicitation publication.)*

If the PRG evaluation shows that adequate competition does not exist, the agency may request an **SBR Program Designation Waiver Request** of the SBR Program designation requirement, using the PRG Evaluation - SBR Program Designation Worksheet. In submitting its request for a SBR Program Designation Waiver, the agency should address as many reasons as possible and provide supporting applicable documentation.

If indicating “Other” as the reason for the SBR Program Designation Waiver Request, approval from GOSBA is required before submitting agency PRGs to the DGS OSP PRG (for DGS OSP delegated procurements) or other agency control authority as required. Send SBR Program Designation Waiver Requests to GOSBA at [SBRWaiver.GOSBA@maryland.gov](mailto:SBRWaiver.GOSBA@maryland.gov) with the subject line: “[Agency Name] - Requisition # - SBR Program Designation Waiver Request”. For DGS OSP delegated procurements, response from GOSBA will be emailed within 72 hours to the [DGS.OSP-PRG@maryland.gov](mailto:DGS.OSP-PRG@maryland.gov) email address in addition to the agency procurement officer.

### **PROCEDURES FOR SBR DESIGNATED SOLICITATIONS**

Prior to designating a procurement for the SBR Program, the agency must conduct thorough market research (using multiple sources\* besides eMMA) to assure sufficient small businesses are available. *[This information should have been included on the PRG Evaluation - SBR Program Designation Worksheet form that was submitted and reviewed by DGS OSP (or the appropriate agency control authority) and/or GOSBA prior to issuing the solicitation.]*

All small businesses found from this market research should be directly solicited when the solicitation is posted on eMMA. The direct solicitation email should include the following language:

The State of Maryland [Agency Name] invites your firm to participate in the attached procurement that has been designated as a Small Business Reserve (SBR). In order to obtain an award, your firm must be registered and certified in the SBR Directory in the State’s eProcurement system eMaryland Marketplace Advantage (eMMA). Refer to the attached link on how to register to become a certified small business eligible for the SBR Program using the eMMA Quick Reference Guide (QRG) [7. SBR Certification/Recertification \(eMMA QRG\) \(maryland.gov\)](#)

Once the SBR-designated solicitation has been issued, the agency procurement officer should continually monitor small business interest during the solicitation process. Some examples of how this can be accomplished include:

- Reviewing what firms have looked at the solicitation and indicated interest in responding via eMMA;
- Reviewing attendance sign-ins from the Pre-Bid/Proposal Conference to see which firms indicated they are small businesses;
- Tracking phone calls and emails regarding the solicitation and keeping a log of firms and their small business status; and
- Monitoring the number of small businesses that submit bids/proposals in advance of the bid/proposal due date.

If it becomes evident to the Procurement Officer that there is unlikely to be sufficient response (more than one bid/proposal) to the solicitation, the agency may determine that it is in the best interest of the State to amend the solicitation and remove the SBR designation to seek more competition. Depending on how much time is remaining prior to the bid/proposal due date, the agency should consider extending the bid/proposal response due date to provide other potential

vendors time to respond. It may be beneficial for the Procurement Officer to consider holding a second Pre-Bid/Proposal Conference.

To notify vendors that this amendment is a possibility, the solicitation should include the following language at the end of the SBR notice on the solicitation cover page:

***However, if small businesses do not show interest in this solicitation, the Procurement Officer has the right to remove the SBR designation via an Amendment on eMMA.***

When the solicitation SBR designation is changed, the revised PRG Evaluation - SBR Program Designation Worksheet must be completed and submitted to GOSBA prior to issuing the Amendment on eMMA.

### **HELPFUL HINTS & TIPS (\*NOTE)**

1. How to conduct market research to find small businesses.
  - a. Utilize Google to see what small businesses in the market area provide the goods or services the agency is seeking.
    - i. Upon locating any firms that appear to meet the scope of work, look through their website for examples of their work. If it is unclear if they do the work you need, reach out to them via email or phone call.
    - ii. If the vendor is not registered in eMMA, reach out to them and let them know about the opportunities available to them. Include the below information: **Maryland is Open for Business!** Maryland's new eProcurement platform "eMMA" is live! Vendors seeking business with Maryland's public bodies can [CLICK HERE](#) to register for access to business opportunities and to access [Quick Reference Guides](#) and [FAQs](#) or go to <https://emma.maryland.gov>. For questions contact [emma.helpdesk@maryland.gov](mailto:emma.helpdesk@maryland.gov).
  - b. Utilize other databases and resources to consider to find small businesses, see below:
    - i. the [State of Maryland Minority Business Enterprise Program](#) Directory
    - ii. Veteran-Owned Small Business Enterprises list in eMaryland Marketplace Advantage (eMMA)
    - iii. SBA Dynamic Small Business Search portal [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)
    - iv. Public Spend Forum/GovShop <https://www.publicspendforum.net/>
    - v. The Vets First Verification Program directory <https://www.va.gov/osdbu/verification/>
2. GOSBA and DGS OSP (for DGS OSP delegated procurements), or other agency control authority, will consider the following in determining whether to exempt or waive a procurement or secondary competition from being designated as an SBR procurement.
  - Approximately what percentage of vendors on the contract vehicle or in the functional area are eligible for SBR awards? The lower the percentage of vendors eligible for SBR awards, the more likely it is that a request for exemption from SBR will be granted.
  - How many master contractors can do the work and how many of those eligible for SBR awards? Even if a term or master contract or functional area thereof has many vendors, the nature of the work might be such that only a few can actually accomplish it. If the

agency can show that limiting the procurement to SBR would unreasonably affect competition, it is more likely that an exemption from SBR will be granted.

3. Procurement officers should include their email addresses when posting the solicitation in eMMA in order to send the eMMA notice with the direct solicitation email to all small businesses identified in the market research. Be sure to include the language provided to the QRG for registering in the SBR Program to become a certified small business.
4. Procurement Officers can utilize the GOSBA [SBR Program Reporting Toolkit](#).
5. Procurement Officers should provide the link to GOSBA's [Technical Training Classroom](#) web page for information about a broad range of vendor training topics, including the SBR Program and becoming a certified small business.