



SMALL PROCUREMENT

Office of Procurement and Support Services



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Small Procurement

Who Should Take this Course?

Every MDH program should have personnel **authorized** to conduct Small Procurements, namely, procurements that **cost less than \$50,000**. This authorization is obtained from OPASS after training on the rules that must be followed to conduct Small Procurements. At least one person in each program should have authority for Small Procurement by taking this training, but it is often helpful if more than one person has also completed this training and received authorization to conduct Small Procurements. OPASS does not conduct Small Procurements.

Contracts that cost more than \$50,000 **must** be referred to OPASS for processing. An OPASS procurement is assigned a tracking number and a contract officer is appointed to assist programs throughout the procurement. To initiate a procurement costing more than \$50,000, complete the appropriate template in the OPASS online form file and then send that completed template along with a fund certification to OPASSASSIGNMENTS.

Persons authorized to conduct MDH Small Procurements do not process them through OPASS. The authorized individual conducts the procurement within the program, independently from OPASS, subject only to the direction of a program supervisor. Completion of this course will enable you to become authorized to conduct MDH Small Procurements on your own, that is, procurements that cost less than \$50,000.

SMALL PROCUREMENT

Guidelines

Standards

Procedures

For assistance with this material

contact OPASS Naisadh (Nick) Desai
at 410-767-5794
or by email
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How to Begin a Small Procurement

Since Oct. 1, 2017, under the State's procurement laws, procurements that **do not exceed \$ 50,000** in cost are termed “**Small Procurements**”

To conduct a Small Procurement the procuring program:

- Must first attempt to procure services through a preferred provider as required under COMAR 21.11.05;
- Must consider procuring goods through an existing DGS Statewide Contract as required under COMAR 21.02.05.04A(4); and
- Should consider procuring services through existing DGS or DBM Statewide Contracts.

Requirements to Avoid Audit Findings

MDH Programs may not:

- Artificially **divide a single procurement** into a number of Small Procurements in order to qualify the purchases as Small Procurements;
- Modify a contract or exercise an option to a contract that was originally approved by the Office of Procurement & Support Services (OPASS), Office of Information Technology (DoIT), the Department of General Services (DGS), the Department of Budget & Management (DBM) or the Board of Public Works (BPW) regardless of the amount;
- Use this delegation for the procurement of commodities and supplies in amounts exceeding \$ 5,000 when made with the Corporate Purchasing Card (CPC); or
- Use this delegation for the procurement of telecommunication service contracts in any amount.

Small Procurement

Initial Responsibilities

The procuring unit is responsible for developing the description of the commodities, activities or duties a vendor must deliver or perform. Initial service or commodity specifications are based on programmatic needs specific to that unit and that procurement.

Only the procurement staff within the unit who are authorized to conduct Small Procurements may conduct Small Procurements. When you complete this course, you will receive that authorization. You must still check with your supervisor to assure that your procurements are requested, but once approved by the appropriate supervisor, you are authorized to proceed with a Small Procurement on your own.

Small Procurement

CATEGORIES



While \$50,000 is the maximum dollar value for a Small Procurement, there are three categories, or dollar value ranges, defined in Small Procurement laws and regulations. Each dollar value range has specific procurement requirements which must be adhered to.

Category I

Category II

Category III

Small Procurement

The 3 Categories of Small Procurement

There are 3 categories of Small Procurements. The category is determined by the dollar value of the anticipated contract.

Category I Small Procurements (under \$5,000): The Board of Public Works requires that, when possible, a Corporate Purchasing Card (CPC) should be used for all purchases under \$5,000.

Category II Small Procurements (\$5,000-\$15,000) do not require a written solicitation posted to eMMA but do require the use of a written contract.

Category III Small Procurements (\$15,000-\$50,000) require both a written solicitation posted to eMMA as well as a written contract.

Small Business Reserve

Unlike the preferences given to Minority Business Enterprises (MBEs) and Veteran-Owned Business Enterprises (VSBEs), under the Small Business Reserve (SBR) program, the entire procurement is placed in “reserve” so that **only** small businesses are eligible to participate.

Small Procurements are often perfectly tailored for award to small businesses. MDH Procurements are presumed to qualify for SBR. Therefore only small businesses should be solicited to offer quotes or proposals in response to an SBR solicitation; however, when no small businesses are available to participate in any particular procurement, it is permissible to solicit large businesses.



Small Procurement

Obtain Competition

Competition is key to a successful procurement. Try to get at least 3 or more quotes for the goods or services you seek to acquire.

Without the bare minimum of 2 responsive bids or acceptable offers, there is no competition. Take action to avoid “single proposal” procurements, which are highly disfavored by the Board Public Works (BPW).

Be sure to solicit bids or offers from certified minority business enterprises (MBE) listed in the Central Directory, under COMAR 21.11.03.06. Small Procurements are often especially desirable by small businesses, many of which are MBEs.

Small Procurement

MBE / VSBE

Note that Maryland State procurement regulations recognize only Maryland Department of Transportation (MDOT) certified MBEs. The MDOT MBE Central Directory is available online at the MDOT website. It may be accessed from:

https://mbe.mdot.maryland.gov/directory/search_select.asp

You may also request a list of certified minority businesses from the MDOT MBE Division by calling (410) 865-1269 or by sending a fax to (410) 865-1309.

CATEGORIES

Let's review in further detail the 3 categories of Small Procurement.



Category I \$0 - \$5,000

Category II \$5,000 -
\$15,000

Category III \$15,000 -
\$50,000

Small Procurement

Category I Corporate Purchasing Card

The State of Maryland/US Bank/Visa Corporate Purchasing Card (CPC) Program requires that certified individuals within MDH make Category I Small Procurements using a Maryland State Visa card.

Benefits of using the CPC:

- Procurement procedure is simplified
- Paperwork is reduced
- Goods and services may be acquired quickly
- Vendors may be paid quickly

Small Procurement

Category I: CPC Purchases

BPW advisory P-001-98 requires that all Category I Small Procurements be made with Corporate Purchasing Cards (CPC), also known as credit cards, consistent with the State of Maryland CPC Program Policy and Procedures Manual.

A copy of the Corporate Purchasing Card Manual can be found on the Comptroller's site at: <https://www.marylandtaxes.gov/state-agency-accounting/corporate-purchasing-card-program.php>

Category I – The Procurement Process

Those items or services that can be, must be purchased using a Corporate Purchasing Card (BPW Advisory P-001-98).

No Contract Fulfillment Team (CFT) is needed at this dollar amount.

In those cases where a vendor/supplier cannot accommodate purchasing card transactions, purchases may be made using an oral solicitation and contract.

Always check first to see if your item or service is available on a statewide contract using the Statewide Blanket Purchase Order (BPO), or if not available through a statewide contract, through a preferred provider.

For a listing of statewide BPOs, go to:

<http://dgs.maryland.gov/Pages/Procurement/BidsAwards.aspx>

Category I – Small Procurement

A procurement costing less than \$5,000 is awarded based upon the decision of the procurement officer.

Competition is always preferred. The procurement officer should seek at least two, and preferably additional quotes from prospective vendors before selecting the contract opportunity that offers best value to the State.

Category I – Documentation Requirements

Category I allows for the use of an **Oral or a Written Contract**, each with specific documentation requirements that are detailed below. These records must be retained until audited or three (3) years after final payment, whichever is later.

Documentation requirements fall into three (3) groups:

1. Oral Contracts
2. Written Contracts
3. Corporate Purchasing Cards

The requirements for each group are listed on the following 3 slides.

Category I – Documentation Requirements For Oral Contract

The documentation required for the Contract Record:

- Record of Quotations received;
- Name of person expending funds;
- Date of contract award;
- Name of contractor;
- Receipt, invoice or voucher; and
- Brief description of item procured.

Category I – Documentation Requirements For Written Contract

The documentation required for the Contract Record:

- Record of Quotations received;
- Name of responsible procurement officer;
- Date of contract award;
- Name of contractor and taxpayer identification number;
- Purchase order or contract;
- Invoice and receiving documentation;
- Brief description of item procured;
- Copy of written or published solicitation, if used
- Copy of board or newspaper notice, if used

Category I – Documentation Requirements For Corporate Purchasing Card

The documentation required for the Contract Record:

- Record of Quotations received;
- Name of authorized purchaser;
- Date of purchase;
- Name of vendor;
- Charge slip and telephone purchasing log;
- Itemized sales slip, packing slip, cash register receipt or repair order;
- Copy of written solicitation, if used; and
- Copy of Bid board or newspaper notice, if used.

Category I – Using ADPICS

If the good or service is unavailable through a statewide contracts or from a preferred provider, a requisition, invitation to bid or purchase order may be entered in ADPICS to procure the good or service.

It is preferred that the procurement officer seek as much competition as practicable. There are all kinds of resources available to identify prospective vendors, including the MBE database as well as online information, catalogues and brochures.

It is important to outreach to MBEs and VSBEs whenever possible as part of the Small Procurement process.

For additional information on MBEs, contact:

<http://www.mdot.maryland.gov/newMDOT/MBE/Index.html>

Category I – Basis For Award

The basis for award is simple:

Best value to the State . . .

as determined by the judgment of the procurement officer.

Category II

Unlike Category I, contracts which are expected to **cost more than \$5,000 but not more than \$15,000, require a written contract** but do not require public notice.

A written contract may take the form of a Blanket Purchase Order (BPO), Direct Purchase Order (DPO), or a Purchase Order (PO) produced through the Advanced Purchasing and Inventory Control System (ADPICS) module of the Financial Management Information System (FMIS), or other written contracts approved by the Office of the Attorney General. Records must be retained until audited or three years after final payment – whichever is later.

Category II – Document Requirements

The documentation required for the Contract Record:

- Name of responsible procurement officer;
- Date of contract award;
- Name of contractor and taxpayer identification number;
- Purchase order or contract;
- Invoice and receiving documentation;
- Description of item procured;
- Bid or offer documentation including names of vendor, solicited copies of any written bids or offers received, bid or offer amounts, statement signed by the procurement officer detailing basis of award, identification of minority business enterprises and small businesses, if applicable, and, when only one bid or offer is received in response to a solicitation, an explanation for the lack of a greater response;
- Copy of written solicitation, if used;
- Copy of eMMA listing and similar notices by bid board, website, or newspaper ad, if used.

Category II – Procurement Process

For this category, a Contract Fulfillment Team (CFT) is not required but may be useful. The CFT should consist of program person(s) requiring the goods or services, the procurement officer, unit fiscal officer and subject matter experts. Sometimes you may also wish to include or consult with a member of the Office of the Attorney General's staff.

The CFT is responsible for developing the specifications/scope of work for the procurement, writing the advertisement or telephone script, if used, and reviewing all responses from bidders/offerors.

Category II – Procurement Process Cont'd

Assuming that there is no statewide contract or preferred provider from which the needed goods/services may be obtained, the CFT proceeds to develop specifications and solicit bids/offers.

A requisition must be entered into the ADPICS portion of FMIS.

Regulations call for a minimum of **2 responsive bids** or acceptable offers by the program unit, but the procurement officer should attempt to receive more than just the bare minimum. The next page will provide pointers on how to get multiple bids.

Category II – Procurement Process Cont'd

The person conducting the procurement should directly solicit multiple prospective contract awardees by sending notice of the contracting opportunity directly to identified vendors via any of various means such as by e-mail, phone, fax, mail, web site, in-person, or advertising in a newspaper or other publication. E-mail is the most common form of direct solicitation.

When providing notification, **all solicitation information must be identically delivered** to all prospective bidders/offerors, who must be given the same amount of time to respond.

Bids or offers may be sent and received by electronic transmission such as e-mail or fax.

Category II – Procurement Process Cont'd

The goal for Category II procurements is to achieve sufficient competition to ensure the most favorable bid price or most advantageous offer to the State.

Don't forget to directly solicit small businesses and MBEs and encourage their participation.

Category II – Awards

Category II procurements are awarded on the basis of either most favorable bid price, most favorable evaluated price, or most advantageous offer to the State. The procuring unit must determine in advance which basis it will employ to make the award, and must tell this to prospective bidders/offerors as part of the solicitation.

If the award is to be made to the most advantageous offeror, prospective offerors must be told when solicited what evaluation criteria factors besides price will be used to make this determination.

Contracts exceeding \$5,000 must be entered into ADPICS as a Blanket Purchase Order (BPO), Purchase Order (PO), or Direct Purchase Order (DPO)

Category III – \$15,000 to \$50,000

Like Category II small procurements, Category III small procurements must be made using a **written contract**. But unlike Category II, Category III must also use a **written solicitation** in order to facilitate **public notice** of the contract opportunity.

Specifically, **Category III Small Procurements must be posted to eMMA.**

The minimum time for posting a Category III Small Procurement on eMMA is 3 days; however, ordinarily the contracting opportunity should be posted for a longer period of time than the bare minimum in order to promote robust competition.

Category III – The Procurement Process

At a minimum, the published notice must contain the following elements:

1. A description of the services requested, including the contract term;
2. Time, date, place and form of response requested;
3. Basis for award, including evaluation criteria if “most advantageous offer” basis is used;
4. The name and telephone number of the procurement officer to whom inquiries may be directed; and
5. A statement that MBEs are encouraged to participate.
6. Finally, a copy of the bid/proposal notice for all Category III Small Procurements must be sent to the Maryland Office of Small, Minority, & Women Business Affairs. Their Website address is:
<http://msa.maryland.gov/msa/mdmanual/08conoff/html/10mi.html>

Written Contract Content

(Shortcut tip: Just use the online form.)

Any purchase order or other contract used for Small Procurements shall contain the following elements:

1. Identification of the parties to the contract including contractor taxpayer identification number, the taxpayer identification number shall be the Social Security Number for individuals and sole proprietors and the federal employer identification number for all other types of organizations;
2. A statement of the scope of the contract;
3. The dollar value of the contract, if known, or estimated dollar value if the actual value is not known;
4. The term of the contract, including completion or delivery date; and
5. Name of the procurement officer responsible for the contract.

Written Contract Content cont'd

In addition to the contract elements specified above, a written Small Procurement contract may include the clauses, items, or conditions specified below as well as those additional clauses necessary for the particular procurement. The language of the following clauses is preferred (and continues on the next 2 pages):

- a. *Termination for Non-appropriation.* "If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination."
- b. *Maryland Law Prevails.* "The law of Maryland shall govern the interpretation and enforcement of this Contract."
- c. *Disputes.* "Disputes arising under this Contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland, and by COMAR 21.10. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer."

Written Contract Content cont'd

- d. *Changes.* "This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract (including the Contract price)."
- e. *Termination for Default.* "If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the State may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the State. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B".
- f. *Nondiscrimination.* "The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law."
- g. *Anti-Bribery.* "The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, or partners; nor any employee of the contractor who is directly involved in obtaining contracts with the State or with any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state of the United States."

Written Contract Content cont'd

- h. Termination for Convenience.* "The State may terminate this Contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. The State shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2)."

The clauses presented on the previous slides may be added to a Purchase Order (PO), Direct Purchase Order (DPO) or Blanket Purchase Order (BPO) when entering this information into the ADPICS system.

Standard contract forms for small procurements shall be approved for form and legal sufficiency by an attorney designated by the Attorney General.

Small Procurements are not required to be reported in the annual reports prescribed by State Finance and Procurement Article, §15-111, Annotated Code of Maryland.

Category III – Documentation Requirements

The documentation required for the Contract Record include:

- Name of responsible procurement officer;
- Date of contract award;
- Name of contractor and taxpayer identification number;
- Purchase order or contract;
- Invoice and receiving documentation; and
- Description of item procured.
- These records must be retained until audited or three (3) years after final payment, whichever is later.

Category III – Additional Documentation Requirements

The additional documentation required for the procurement file include:

- A copy of certification by the appropriate fiscal authority of fund availability to satisfy the contractual requirement;
- A copy of the written solicitation;
- A copy of the eMMA listing as well as bid board, web notice or newspaper notice, if used;
- Bid or offer documentation including names of vendors, copies of any written bids or offers received, bid or offer amounts, statement signed by the procurement officer detailing basis of award, identification of minority business enterprises and small businesses, if applicable, and, when only one bid or offer is received in response to a solicitation, an explanation for the lack of a greater response; and
- Contract award posted to eMMA.

Category III – Award

Like Category II procurements, **Category III procurements are awarded on the basis of either most favorable bid price, most favorable evaluated price, or most advantageous offer to the State.** The procuring unit must determine, in advance, which of the basis it will employ to make the award, and must tell this to prospective bidders/offerors as part of the solicitation.

If the award is to be made to the most advantageous offeror, prospective offerors must be told when solicited what factors (criteria) besides price will be used to make this determination.

Also like Category II procurements, Category III small procurements must be entered into ADPICS as Blanket Purchase Order (BPO), Purchase Order (PO), or Direct Purchase Order (DPO)

Small Procurement

Debriefing cont'd

The procurement officer should conduct the debriefing. Depending on circumstances, others might be involved, such as staff familiar with the selection decision and contract award.

It is important to remember that a debriefing should be an informative and positive experience for the unsuccessful vendor.

A debriefing may be conducted in person or by teleconference.

Finally, a record of the debriefing must be placed in the contract file.

Hopefully, a vendor leaves a debriefing anticipating the next chance to compete for State dollars.

Small Procurement Do's

- Place the order with a mandated source, if available for the subject of the contract (Maryland Correctional Enterprises, Blind Industries and Services of Maryland, Maryland Works, State Contract).
- Obtain competition by securing at least two price quotes on open market purchase.
- Seek out VSBEs and MDOT certified resident MBEs to the extent possible.
- Maintain an open, competitive, fair and ethical process at all times. Give no vendor an unfair competitive advantage. All vendors should be treated the same.
- On open market purchases, spend public funds with the same degree of prudence that you would use when spending your personal funds.
- Document your work and retain documentation for audit review.

Small Procurement **Don'ts**

- Buy from a debarred vendor. A list of debarred vendors is available on the BPW website at <http://bpw.maryland.gov/Pages/default.aspx>
- Artificially subdivide a contract/purchase order as a means of evading the purpose of the State Procurement Law.
- Permit a vendor or supplier to provide specifications or assist in their drafting. Maryland ethics law prevents such a vendor from bidding.
- Use overly restrictive specifications that may stymie competition.

Please continue to the quiz by following the link below:

<https://www.surveymonkey.com/r/QM3S2SB>

You will be redirected to a new window.