

Department of Legislative Services  
 Maryland General Assembly  
 2015 Session

FISCAL AND POLICY NOTE

House Bill 698 (Delegate Reznik, *et al.*)  
 Health and Government Operations

Reorganization of State Procurement

This bill establishes the position of Chief Procurement Officer (CPO) within the Board of Public Works (BPW) to control and oversee all procurement activity subject to oversight by BPW. Procurement control authority currently exercised by various agencies is repealed, although the CPO retains authority to delegate procurement authority to agencies with specific expertise. The bill also requires that all contracts subject to BPW oversight valued at \$1.0 million or more be approved by BPW. It includes related activities and reporting requirements for BPW, the Office of the Attorney General (OAG), and the Department of Budget and Management (DBM).

The bill’s requirement that DBM and BPW develop new job titles and classifications for procurement staff and report on their work takes effect June 1, 2015.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$819,100 in FY 2016 to staff the office of the CPO; these expenses are partially offset by the transfer of procurement staff from other agencies, for a net increase of \$470,300. Out-year expenditures reflect annualization, inflation, and termination of temporary expenses for a procurement management consultant. Procurement expenditures (all funds) may decrease (by as much as \$100.0 million annually) beginning in FY 2018 due to administrative efficiencies and strategic purchasing implemented by the CPO. Reclassification of procurement staff may result in a net increase in staffing costs, but a reliable estimate of the effect cannot be determined. No effect on revenues.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	470,300	592,000	566,600	592,300	619,300
GF/SF/FF Exp.	0	0	(-)	(-)	(-)
Net Effect	(\$470,300)	(\$592,000)	(\$566,600)	(\$592,300)	(\$619,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** The bill may have an indirect effect on local procurement to the extent that it promotes or restricts the use of intergovernmental purchasing agreements.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The position of BPW Procurement Advisor is eliminated and its functions are assumed by the CPO. In addition to the responsibilities previously assumed by the Procurement Advisor, the CPO is responsible for:

- ensuring that procurement policies, procedures, and forms are the most advanced available;
- developing regulations to implement State procurement law for approval by BPW;
- delegating control of procurement activity to units with expertise in specified types of procurement, while retaining oversight;
- developing performance metrics for State procurement;
- implementing strategic sourcing when appropriate;
- issuing annual summaries and descriptions of all procurement activity in the State, including any procurements that are exempt from BPW oversight;
- advising the General Assembly on legislation to enhance the efficiency and transparency of State procurement;
- managing eMaryland Marketplace (eMM);
- coordinating with other governmental entities to maximize the use of intergovernmental purchasing; and
- employing staff in accordance with the State budget. However, to the extent practicable, the CPO must use staff currently working for BPW and procurement staff who transfer from other agencies to assist in carrying out the CPO's functions.

On or before October 1, 2016, the CPO must report to relevant policy committees of the General Assembly on:

- a structure for delegating and overseeing specified types of procurement to units with expertise in those types of procurement;
- the development of performance metrics and the implementation of strategic sourcing;
- recommendations for consolidating and deleting existing reporting requirements;

- recommendations for reporting requirements for procurement units that are exempt from BPW oversight;
- whether the current statutory preference for competitive sealed bids should be changed and, if so, how;
- whether the small procurement threshold of \$25,000 should be raised and, if so, by how much; and
- which statutory exemptions from State procurement law and obsolete programs, if any, should be repealed.

Also by October 1, 2016, BPW's General Counsel and OAG must report to the relevant policy committees of the General Assembly on a process for establishing a centralized procurement attorney office in the State to provide consistent interpretation and application of procurement laws to BPW and procurement staff.

By October 1, 2015, BPW and DBM must establish new job titles and classifications for current and future procurement staff, and provide a report on their actions to specified committees of the General Assembly.

**Current Law:** Division II of the State Finance and Procurement Article and Title 21 of the Code of Maryland Regulations (COMAR) together provide the framework for procurement in Maryland. Statute authorizes BPW, a constitutional entity consisting of the Governor, Treasurer, and Comptroller, to control procurement by State agencies by setting policy, adopting regulations, and establishing internal operational procedures. At the same time, however, statute authorizes BPW to delegate any of its procurement authority that it determines to be appropriate for delegation and requires BPW approval for specified procurement actions. The board does not have authority over capital expenditures by the Maryland Department of Transportation (MDOT) or the Maryland Transportation Authority in connection with State roads, bridges, or highways.

Statute requires BPW to appoint a Procurement Advisor who serves at the pleasure of the board. Statute also delineates 16 distinct responsibilities for the Procurement Advisor, including examining all procurements subject to board review and making recommendations regarding their appropriateness, enhancing communication among State agencies regarding procurement matters, and establishing policies for effective training of State procurement staff. The Procurement Advisor is not authorized by statute to manage or oversee procurement by State agencies. BPW's General Counsel provides legal advice to the board, but OAG interprets procurement laws and regulations for agencies.

State law establishes 10 primary procurement units with exclusive jurisdiction over their own specified procurements, subject to BPW's authority. In addition, 7 of the 10 agencies are authorized to control and supervise the procurement of specified goods or services for

the State. These agencies are referred to as control authorities. Four of the control authorities actively oversee the procurement of other agencies: the State Treasurer (for banking and financial services, insurance, and insurance services); DBM (for services and motor vehicle leases); the Department of General Services (DGS) (for real property, other supplies, construction, and construction-related services); and the Department of Information Technology (for information processing and telecommunication equipment and services). MDOT, the Maryland Port Commission, and the Department of Public Safety and Correctional Services are also recognized as control authorities but do not have active oversight of other agencies. Additionally, the University System of Maryland (USM), Morgan State University (MSU), and St. Mary's College of Maryland (SMCM) are primary procurement units (*i.e.*, they manage their own procurement) but are not control authorities; they are also exempt from most provisions of State procurement law, and the bill maintains that exemption.

eMM has been Maryland's online procurement portal for the past decade. Agencies may not charge vendors a fee to access eMM, nor can they be charged a fee to post notices of a procurement or award or to use eMM to conduct a procurement. State agencies must post all invitations for bids and requests for proposals valued at \$10,000 or more on eMM, but they are not required to receive bids and proposals electronically. All contract awards in excess of \$25,000 must also be posted on eMM. eMM is self-sustaining, with a 1% vendor fee on all agency purchases from statewide contracts providing approximately \$1.2 million annually for its operation and maintenance.

Under COMAR, BPW authorizes primary procurement units to enter into procurement contracts up to \$200,000 without board approval. However, Chapter 450 of 2012 raised the threshold for service and capital improvement contracts by USM, MSU, and SMCM from \$500,000 to \$1.0 million. Most procurements valued at \$200,000 or more (or \$1.0 million for the public universities) must be submitted to BPW for approval. Agencies may also modify specified contracts without board approval but must report contract modifications that exceed \$50,000. Also through COMAR, control agencies have sub-delegated authority to agencies for some procurements valued at less than \$200,000.

In addition to the exemptions for public universities and road projects, statute exempts about 30 State entities from most State procurement law. These exemptions typically are not all encompassing; instead, they usually are for discrete procurement activity, such as the restoration of historical buildings for the Department of General Services or investment managers for the State Retirement Agency.

**Background:** During the 2014 interim, the Department of Legislative Services (DLS) conducted a comprehensive review of State procurement policies and practices to identify strategies for improving their competitiveness, efficiency, and transparency. A copy of the

report, titled *Review of Maryland's Procurement Policies and Structures*, can be found [here](#).

The report identified several issues regarding the organization and operation of State procurement, including:

- vendor frustration and diminishing participation in State procurement (according to BPW, 11.2% of contracts presented to it for approval in fiscal 2013 had only one bidder);
- inconsistent application of State procurement policies among agencies (the report highlights one instance where differing interpretations of procurement requirements by two agencies resulted in the State paying \$300,000 more for a contract than it likely needed to);
- lack of strategic planning for cost savings;
- low morale among procurement staff;
- inadequate use of technology; and
- obsolete programs and burdensome reporting requirements.

To address these issues, DLS recommended:

- reorienting the purpose of State procurement to be obtaining the best value for the State instead of the best price;
- creating the CPO position within BPW to streamline and standardize State procurement policies and practices;
- raising the threshold for BPW contract approval from \$200,000 to \$1.0 million to reduce administrative burdens on agencies;
- integrating eMM with the State's financial management system;
- repealing obsolete programs and consolidating reporting requirements;
- reconfiguring and standardizing position titles, classifications, and compensation for procurement staff across agencies; and
- raising the ceiling for small procurements from \$25,000 to \$50,000.

Based on an analysis conducted by a procurement consultant hired by BPW, DLS estimated that implementation of these recommendations could generate annual savings of approximately \$100 million in procurement costs.

**State Fiscal Effect:** The bill provides a great deal of flexibility to the CPO in staffing the office to carry out the functions it delineates. To the extent practicable, the CPO is to use existing BPW staff and procurement staff from other agencies to carry out its duties. Based on the findings and recommendations of the DLS report, and consistent with the bill

granting the CPO authority to delegate procurement authority, it is anticipated that the vast majority of normal procurement and contract management functions will continue to be carried out at the agency level rather than by the CPO. The role of the CPO is expected to be primarily to carry out strategic and oversight functions, with a focus on (1) ensuring the use of modern and standardized procedures by agency procurement staff; (2) implementing strategic sourcing to reduce costs; (3) upgrading eMM; (4) coordinating training; and (5) developing performance metrics and associated reporting.

Under the assumption that most procurement activity continues to be carried out by agencies, the CPO's ability to draw from procurement staff at other agencies is limited, because reducing procurement staff will put undue strain on procurement units. Also, with just nine current positions, BPW has had enough staff to carry out only an "audit and review" function with respect to State procurement, not the strategic functions envisioned by the bill. However, raising the BPW contract threshold from \$200,000 to \$1.0 million is expected to reduce the number of contracts that come to BPW for approval by about half, from about 500 annually to about 250. This should free up some staff capacity within BPW to carry out the functions envisioned by the bill and also reduce administrative burdens on procurement units.

As envisioned by the DLS report, the CPO requires a staff of 10 to 12 positions to carry out its strategic functions; neither BPW nor any of the procurement control agencies have provided any alternative estimates. It is anticipated that at least six of those positions can be filled by current BPW staff (primarily support staff) and procurement staff transferred from other agencies, most likely from other control agencies such as DGS and DBM. As transportation projects remain outside the purview of the CPO, it is not anticipated that staff from MDOT will be used. As long as the number of transfers is kept to a minimum (a total of three or four), it is not anticipated that they will have a substantial negative effect on agency performance, especially with the additional support that the CPO's office will be able to provide to agencies. The creation of the CPO position has no fiscal effect because it replaces the existing Procurement Advisor. One definitive transfer is the eMM program manager, who transfers from DGS to BPW to implement the bill's requirement that the CPO administer eMM.

The remaining four to six positions are filled with new staff with expertise in areas that current staff lacks, including strategic sourcing and performance measurement. The specific job descriptions are not specified, but given the oversight and administrative functions they are expected to carry out, it is anticipated that they would be generally mid-level or senior administrative positions (*i.e.*, grades 20 to 24) with an average starting salary of \$70,000. Therefore, general fund expenditures by BPW increase by \$470,298 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring five senior procurement administrators to carry out the CPO's functions specified above. It includes salaries, fringe benefits, one-time start-up costs, and

ongoing operating expenses, including \$50,000 for a procurement consultant to advise the CPO on structuring the office and best practices in public procurement. The information and assumptions used in calculating the estimate are stated below:

- the position of CPO replaces the current Procurement Advisor;
- the office of the CPO consists of 10 to 12 positions, including at least 3 filled by current BPW staff and at least 3 filled by procurement staff transferred from other agencies, most likely other control agencies like DGS and DBM;
- one of the positions transferred to BPW is the eMM program manager from DGS; and
- the remaining positions consist of five new senior procurement managers with an average starting salary of \$70,000.

Positions	5
Salaries and Fringe Benefits	\$388,429
Procurement Management Consultant	50,000
Other Operating Expenses	<u>31,869</u>
<b>Total FY 2016 State Expenditures</b>	<b>\$470,298</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. They also include \$50,000 in fiscal 2017 for continued use of the procurement consultant; that expense ends in fiscal 2018.

It is anticipated that, within three years of the CPO’s establishment, the strategic initiatives put in place could save the State as much as \$100.0 million annually (all funds) in reduced procurement costs. This is based on an analysis performed by a procurement consultant hired by BPW, who reviewed State policies and practices and compared them with those of other states that had implemented procurement reforms like those that are expected to be implemented by the CPO.

**Small Business Effect:** Changes in procurement policies and practices instituted by the bill and the new CPO may facilitate small business participation in State procurement.

**Additional Comments:** The bill maintains MDOT’s autonomy from BPW for road and bridge construction, but repeals its status as a primary procurement unit, along with all other primary procurement units. This distinction has no practical effect on road or bridge

projects, but clarifying language may be necessary. For this analysis, DLS assumes that road and bridge projects are not affected by the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture; Department of Business and Economic Development; Board of Public Works; Department of Budget and Management; Department of Natural Resources; Maryland State Department of Education; Department of General Services; Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Minority Affairs; Maryland Energy Administration; Department of State Police; Morgan State University; Maryland Department of Aging; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2015  
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