



GRANTS & PROCUREMENT

How They Work Together

Presented by:

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Martin O'Malley, Governor **Anthony G. Brown, Lt. Governor**



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Chief of Procurement
Dept. of Budget & Management

- State employee for 31+ Years
 - 4 years with Dept. of Human Resources
 - 17 years with Dept. of Health & Mental Hygiene
 - 10 years with Dept. of Budget & Management
- 24 Years of Procurement Experience



Dept. of Budget & Management

- DBM responsible for **annual average** of about:
 - **\$1 Billion** in Direct procurement of services and information technology contracts
 - **\$1 Billion** in Indirect procurement of services and information technology contracts entered into by other State agencies
 - **Up to 25%** of the dollar value of State procurements



Procurement Applicability

Per COMAR 21.01.03.02 A & 03

- These regulations apply to *every expenditure* by a State agency for the acquisition, rental, purchase, or lease of supplies, services, architectural services, engineering services, and the lease of real property by the State as lessee.
- Every State agency is subject to the provisions of these regulations **unless expressly exempted** by *this title* or by *statute*.

Procurement Applicability

Per COMAR 21.01.03.04

- This title does not apply to any procurement or contract to the extent of any conflict with:
 - A governing federal law, regulation, assistance instrument, or other requirement; or
 - The terms of any gift as defined in Article 1, Subsection 22, Annotated Code of Maryland
 - A grant from other than the federal government is treated as a gift

Procurement Exemptions

- Specific exemptions in law or regulation:
 - Revenue producing contract at a State higher education facility that involves research contracts or grants sponsored by third parties (**COMAR 21.01.03.03 B(1)(e)**)
 - The Maryland Energy Administration, when negotiating or entering into grants or cooperative agreements with private entities to meet federal specifications or solicitation requirements related to energy conservation, energy efficiency, or renewable energy projects that benefit the State (**SF&P 11-203 (a) (1) (xviii)**)

Grant

Per COMAR 21.01.02.01 B (46)

- “Grant means the bestowing of a power, money, privilege, property, or other item of value that may be conditional, although without other consideration, by the state upon another party. Grants are identified specifically by formula or specific allocation in law or in the annual operating budget act, bond authorizations, or other acts of the legislature. A grant as defined here is not a contract for purposes of this title.”

Procurement Exemptions

Summary

- Previously listed exemptions:
 - For **conflict** with a governing **federal** law, regulation, **assistance instrument**, or other requirement
 - For Energy Admin. & revenue producing higher education research grants
 - When **identified specifically** by formula or specific allocation in law or in the annual operating budget act, bond authorizations, or other acts of the legislature
 - **A grant is not a contract**

Grant Conflicts

- There must be an actual conflict
 - In this case it's better to follow the dictates of the grant to qualify for the funds than to follow the procurement regulations & lose the grant funds
 - Usually there is no conflict
 - Especially true for federal grants
 - Federal requirements are to follow the grant recipient's procurement policy unless Federal requirements are more stringent (OMB Circular A102 2.1)
 - Maryland regulations are typically more stringent than Federal regulations
 - **So Maryland regulations generally prevail**

Grant vs. Contract

- In simplest terms:
 - A contract involves “quid pro quo” (this for that)
 - Contractors get paid only if they accomplish the requirements (**deliverable**) of the contract
 - Grants have **conditions**, not deliverables
 - Grant funds:
 - Must be spent for certain things or activities
 - May not be spent for certain things or activities
 - Are not contingent on specific results happening

State Control of Appropriations

- There are many restrictions on the expenditure of State funds
- Major restrictions are
 - The procurement law & regulations
 - Restrictive language in budget bills
- A key reason for this lies in the stated difference between a procurement contract and a grant
- The State has a strong preference for procurement contracts where payment is tied to deliverables
- Versus grants where payment is made for effort of a prescribed nature without regard for results

State Control of Appropriations

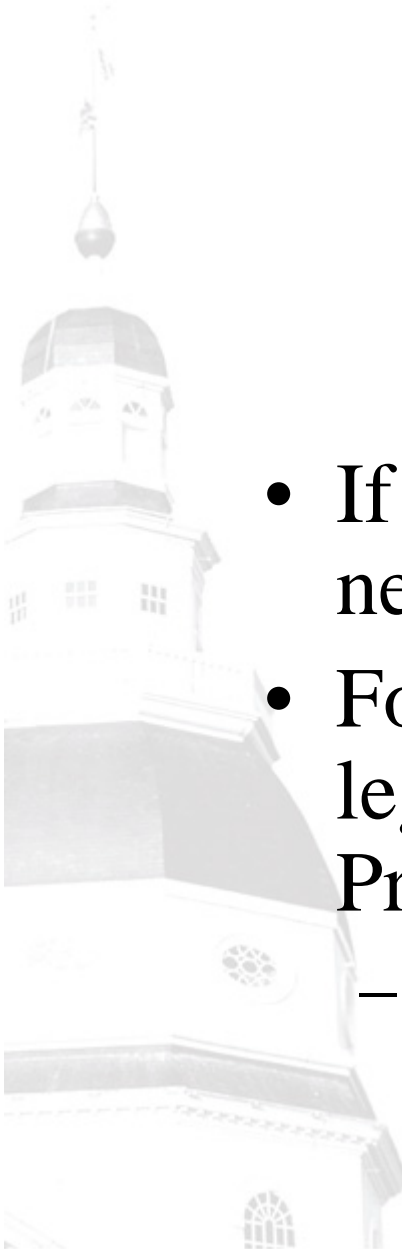
Per Section 36, House Bill 50 (FY 2008 Budget Bill)

- Any budget amendment to increase the total amount of special, federal, or higher education fund appropriations shall be subject to:
 - **A budget may not be amended to increase a federal fund appropriation by \$100,000 or more unless documentation evidencing the increase in funds is provided with the amendment and fund availability is certified by the Secretary of Budget and Management**
 - **No expenditure or contractual obligation of funds authorized by a proposed budget amendment may be made prior to approval of that amendment by the Governor**

State Control of Appropriations

Per Section 36, House Bill 50 (FY 2008 Budget Bill)

- **State agencies shall administer these federal funds in a manner that recognizes that federal funds are taxpayer dollars that require prudent fiscal management, careful application to the purposes for which they are directed, and strict attention to budgetary and accounting procedures established for the administration of federal funds**
- **To the extent consistent with federal requirements, when expenditures or encumbrances may be charged to either State or federal fund sources, federal funds shall be charged before State funds are charged.**
- **When additional federal funds are sought or otherwise become available in the course of the fiscal year, agencies shall consider, in consultation with the Department of Budget and Management, whether opportunities exist to use these federal revenues to support existing operations rather than to expand programs or establish new ones**



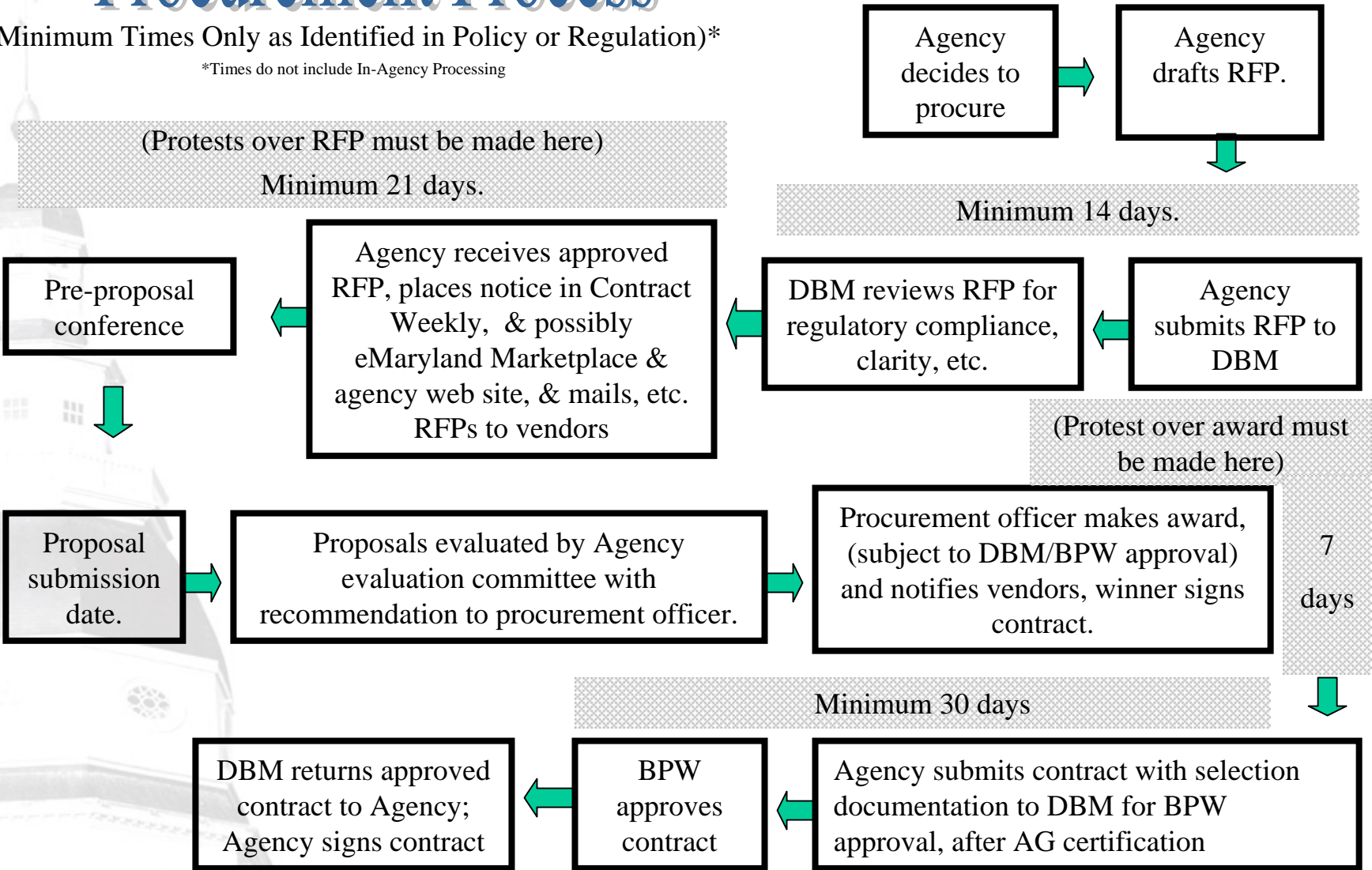
No Exemption = Procurement

- If a total exemption exists there is no need to do “a Procurement”
- For anything for which there is not a legitimate exemption, there must be “a Procurement”
 - The Procurement process as per COMAR Title 21 must be followed
 - **For any purchase of goods or services**
 - **Regardless of the source of funds**

Procurement Process

(Minimum Times Only as Identified in Policy or Regulation)*

*Times do not include In-Agency Processing



DBM = Department of Budget and Management

RFP = Request for Proposal

BPW = Board of Public Works

AG = Attorney General

Said Another Way: Grant In, Doesn't = Grant Out

- The receipt of funds via a grant does not produce a grant for the disbursement of the grant funds
- Unless there is a specific:
 - Procurement Exemption, or
 - Conflict with grant terms & procurement regulations, or
 - Authority to issue grants
 - Any expenditure of funds is governed by the State's procurement regulations
 - This means a contract must be awarded through some type of procurement method, competitive or otherwise

Grant In, Doesn't = Grant Out

(Cont'd)

- The source of funds is largely irrelevant in terms of whether a procurement must be done
 - State law & regulations govern the disbursement of funds that are in the possession of the State
 - Refer to OMB Circulars
 - **(OMB Circular A-102 2.1)**
 - **A-133 Sub Part B .210 & A-87 B.8**
 - **Federal Guidelines detailing Procurements vs. Grant Award documents**



If Not Exempt, Procurement Rules Apply

- Need approval of control agency over any delegation level
- Need approval of BPW over threshold levels
 - Usually \$200,000
 - \$100,000 for sole source under DBM authority
 - \$50,000 for sole source under other agency
 - \$50,000 if only 1 bid received



If Not Exempt, Procurement Rules Apply (Cont'd)

- Need to advertise procurement opportunity if doing competitively
 - On e-Maryland Marketplace
 - Web site
 - Direct solicitations
- Must advertise award for any method over \$25,000



If Not Exempt, Procurement Rules Apply (Cont'd)

- Need legally sufficient contract
 - Must contain many standard clauses
- Always need to consider MBE subcontracting situations
 - Even applies for some exempt situations

Procurement Focus

This training focuses on **Incoming** grants which:

1. Require the purchase of goods or services from a **non-agency source** to help achieve the grant purpose

- The State agency receiving the grant cannot do everything itself related to the grant purpose
- Non-agency Sources can include:
 - **Private, for-profit entities**
 - **Private, not-for-profit entities**
 - **Other Maryland State agencies**
 - **Maryland local government agencies**
 - **Any other type of government entity**



Procurement Focus (Cont'd)

This training focuses on **Incoming** grants which:

2. Do not have a means that is exempt from the State's procurement regulations to determine how **all** the needed goods or services will be obtained

- Exemptions include:
 - **Agreements with any government entity**
 - **When specific laws or regulations exist that detail how funds can be distributed**
 - **Specific agency exemptions or exemptions for a particular purpose**

Procurement vs. Grant

- A procurement is conducted to determine
 - What vendor (who) will have the right to provide/perform what is needed
 - How much that vendor will be paid
 - Possible particular aspects such as time frames
- A grant already determines who & how much & generally what is to be done
 - This is why no procurement is needed
 - A grant is a means for agencies to **award or sub-award** funds to other entities



Procurement Methods

- The usual connotation for “a Procurement” is a fully advertised, fully competitive situation
 - However, Maryland procurement regulations include many different *procurement methods*
 - Available methods will be examined in this training
 - Focus will be on selecting the procurement method with the best combination of:
 - **Satisfying the objective of the incoming grant**
 - **Minimizing the expenditure of time and effort**
 - **Maximizing the benefit received for the grant funding**

Competitive Procurement Methods



- **Competitive Sealed Bidding (CSB)**
 - Can be done in 2-3 months* if don't need Board of Public Works (BPW) approval
- **Competitive Sealed Proposals (CSP)**
 - Usually take 3-4 months* to complete if don't need BPW approval

(*does not include the time needed to draft (write) the specifications)



Competitive Procurement Timeframes

- Contracts require BPW approval if:
 - Over \$200,000 in value, including options
 - Over \$50,000 in value including options, if only 1 response is received
 - Add 1 month to non-BPW timeframe when BPW approval required
 - 3-4 months for CSB
 - 4-5 months for CSP



Competitive Procurement Timeframes (Cont'd)

- Previously listed timeframes are for the procurement process only
- Does not include time to prepare the specifications
- No minimum timeframes to prepare specs.
 - Can be done in a few days
 - Seldom is, however
- Typically takes month or more



Competitive Procurement Timeframes (Cont'd)

- 6 to 9 months
 - Most typical timeframe for *all* parts of the procurement process over \$200,000
 - Includes preparation of specifications
 - Procurement process
 - All approvals, including BPW

Overview Course for Integrated Project Management (IPM)

Sponsored by the
Department of Budget & Management



Comparison of Procurement Methods & Dollar Range Timeframes (In Days)

(* with MBE goal)

PROC. METH.	AMT. FR.	AMT. TO	MIN TIME	REASON MIN	REASON MAX
SMALL	\$1	\$2,500	1	1	3
SMALL	\$2,501	\$10,000	1	3	10
SMALL	\$10,001	\$25,000	3 Work	7 / 21*	14 / 28*
CSB	\$25,001	\$200,000	39 / 53 *	66 / 80 *	86 / 100 *
CSP	\$25,001	\$200,000	39 / 53 *	96 / 110*	116/ 130*
CSB	\$200,001	Unlimited	66 / 80 *	104 /118*	146 /160*
CSP	\$200,001	Unlimited	66 / 80 *	131 /145*	213 ³⁰ /227*



INCOMING GRANT FUNDING SOURCES

- Most typical types of incoming (funding) grants
 - Federal government
 - By far the largest grant source - \$6.4 billion to State Agencies
 - Private Foundations; e.g.,
 - Robert Wood Johnson Foundation
 - Abell Foundation
 - Other sources

Ideal Situation

1. Perform a procurement to identify the vendor(s) to include in a grant application
 - The procurement will precede the grant application
 - Procurement Officer should be part of the grant proposal team

OR

2. After receive the grant award perform a procurement to determine which vendor(s) will be used to perform the grant requirements
 - When specific vendor is not named



Multi-Year Grants Allow the Ideal

- Sometimes grants cover multiple years
 - Either initially
 - Or with renewable options
- For multi-year grants
 - A normal procurement should be conducted for activities to take place well in the future

The Ideal is Rarely Achieved

- Usually don't have time to do a CSB or CSP procurement either before or after the grant application or award
- Required timeframes to:
 - Submit the grant application
 - Complete the grant activity
- Are less than the typical timeframes to complete a CSB or CSP procurement
- Doesn't mean just give up & pick who want
 - Try other procurement options

The Ideal is Rarely Achieved

- Frequently federal grants are awarded retroactively or at the end of a federal FY
 - There may have been verbal notification of the proposed award
 - But the written notification may come weeks after the verbal notification, if there was even a verbal notice
 - Agencies shouldn't start any activity or expenditure without formal written notification of the award
 - Frequently the date by which funds must be expended coincides with the end of federal fiscal year
 - These circumstance make it difficult to follow normal procurement practiced

Procurement Options

- Contingency procurement
 - If anticipate ongoing opportunities to submit grant applications for the same general activity. e.g.,
 - Homeless initiatives
 - Addictions treatments
 - Foster care
 - Should perform a procurement to identify the vendor(s) who will be included in the application
 - Must clearly identify that the procurement is conditional
 - Know that will get some level of funding
 - But guarantee the actual grant funding level

Contingency Procurement

- Can do for a period of time to cover all applications of that grant type filed during that time period
 - Can be for a year
 - Can be for multiple years



Procurement Shortcuts

- Alternatives to a normal competitive procurement
 - Sole Source
 - Small procurement
 - Emergency procurement
 - Small Procurement Reserve Program
 - Intergovernmental agreement (MOU)
 - Intergovernmental Cooperative Purchasing Agreement
 - Existing State contract
 - Preferred Provider

Procurement Alternatives

Sole Source Awards

- Misconception: if a grant specifies a specific vendor to receive the grant funds, this produces an exemption
 - Instead it produces a sole source situation
 - Means a situation when only a single entity can provide the good or service that is required
 - Sole Source is a procurement method permitted under the State procurement law & regulations
 - So it's not a conflict
 - It is simply a justification for the sole source



Typical Sole Source Situation

- One or more entities are identified in the grant application as performing certain activities
- If the grant is awarded the expectation is that this/these entity(ies) will perform what they were identified as doing
 - Sometimes the grant will specifically require this
 - Other times the grant will be silent on this issue

Sole Source Situations (Cont'd)

- State agencies may receive “PASS THROUGH” grants
 - A **pass through** grant is to be awarded to a specific recipient
 - The State agency is an intermediary between the grantor and the designated end recipient
 - In most instances the fact the grantor has designated the end recipient produces a sole source procurement situation with that recipient
 - There may be instances when the specific wording of the pass through grant or other controlling regulations or statutes allow the pass through grant to be awarded to the designated end recipient as a grant rather than a sole source procurement contract

Sole Source Situations (Cont'd)

- If a grant requires that any/all **identified entities** perform the role that was described in the grant application
 - This is a sole source justification
- If a grant is silent on the treatment of identified entities
 - Seek clarification from grantor
 - If grantor will permit variation in the specific entity to perform an activity
 - Should do normal competitive procurement
 - Unless time or, in the best judgment of the agency, other circumstances dictate in favor of sole source



Sole Source Situations (Cont'd)

- Frequently a grant application does not require the identification of a specific vendor
- It just describes what activities will be performed, but not who will do them
 - In these situations the agency should do a procurement to determine which vendor(s) to use to perform the grant activities
- Unless time or, in the best judgment of the agency, other circumstances dictate in favor of sole source

Sole Source Situations (Cont'd)

- Lack of time (Most frequent comment)
 - The time frame:
 - Between when the opportunity to apply for a grant is learned, &
 - When the application must be submitted
 - Is too short to conduct a normal competitive procurement
 - Doing a procurement will cause the submission deadline to be missed
 - The State doesn't want any agency to miss out on the chance to obtain the grant funds
 - Need to use a procurement method that fits within the needed time frame
 - A legitimate Sole Source is a possible way to make it fit



Sole Source Situations (Cont'd)

- Frequently produces a situational sole source
 - Not a true sole source
 - But is the only vendor that can meet a time frame
 - Or the vendor deemed most likely to result in the acceptance of a grant application
 - With prior control agency approval can use this as a sole source justification



Procurement Alternatives

Small Procurement

- Can be used if anticipate the needed good or service can be obtained for \$25,000 or less
- Involves minimal specifications
- Award can be made in 3 working days or less
- Has simplified contract
- Simplified advertising requirements
- Caveat
 - Can't artificially divide need to make into multiple small procurements



Procurement Alternatives

Emergency Procurement

- **Emergency** (Per COMAR 21.01.02.01 B (36))
 - Means a sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or to mitigate serious damage to public health, safety or welfare
 - Can be construed to mean the loss of funds that would be available if a grant is awarded
 - The loss of funds is equivalent to the loss of service, which is detrimental to the public



Emergency Procurement (Cont'd)

- Doesn't automatically mean all grant applications can produce an emergency
 - Has to be for significant activity
 - Has to truly be unforeseen
 - Had the possibility of doing contingency procurement
 - Have to determine no other procurement method could achieve what is needed
 - Has to be reported to control agency and BPW over \$25,000



Procurement Alternatives

Interagency or Intergovernmental Agreements

- Are exempt from the procurement regulations
 - Sometimes MBE or other requirements still apply
- Common nomenclature is Memorandum of Understanding (MOU), or Agreement (MOA)
- Used when another Maryland State agency or another government at any level – state, local or federal- or sub-agencies of any government will actually provide what is needed



Interagency or Intergovernmental Agreements (Cont'd)

- The other government can provide what is needed either directly or by contracting out
 - Money is only paid if required deliverables are met
 - The government must perform or not be paid, regardless of whether it has to pay subcontractors
- Some MOUs must meet MBE requirements



Interagency or Intergovernmental Agreements (Cont'd)

- For 2007 fiscal year all MOUs **with public institutions of higher education** over \$100,000 must be reported by **8/1/07** to **DBM**

Procurement Alternatives

Intergovernmental Cooperative Purchasing Agreements (IGCP)

- **Primary Procurement Unit** with control authority over the needed goods or services must approve
 - DBM
 - Services and Information Technology
 - DGS
 - Supplies, construction, maintenance
 - IGCP can't be used for A & E services
 - Treasurer
 - Insurance and banking services
 - MDOT, DPSCS for their own purposes

Intergovernmental Cooperative Purchasing Agreements (Cont'd)

- Means can use a contractor selected under a procurement conducted by another government
 - Has some limitations
- It's OK to use this method as long as the other government's contract is:
 - Competitively procured
 - Identified as being available for use by other governments
- And the primary procurement unit agrees

Procurement Alternatives

Use of State-wide Contracts

- DBM has a number of master contracts available for any state agency
 - Management Consulting Services (MCS)
 - Financial & Financial Related Auditing Services
 - IT Only
 - Consulting and Technical Services (CATS)
 - Internet Services Provider (ISP)
 - Computers, printers and peripherals & software contracts
- DGS also has many statewide contracts



Procurement Alternatives

Joint Agency Procurements

- Agencies can combine to do a joint procurement
 - One agency can conduct a procurement on behalf of another (others)
 - Can request that a control agency obtain a new master contract



Procurement Alternatives Preferred Providers

- Can buy some goods and services from:
 - Md. Correctional Enterprises (MCE)
 - Formerly State Use Industries
 - Also exempt because a State entity
 - Blind Industries and Services of Maryland (BISM)
 - Certified Sheltered Workshops
 - Maryland Works is umbrella entity
- Without conducting a procurement
 - They have right of first refusal for what they sell

Procurement Alternatives

Small Business Reserve Program

- Limited to 22 State agencies
- Designated procurements can only be awarded to certified small businesses
- Businesses have to average no more than \$2 million per year in sales/business
 - Certain other limitations
- Businesses can register via DGS web site in less than ½ hour
- Non-profit entities cannot participate as a small business

Small Business Reserve Program

(Cont'd)

- If have consultants, etc. that would like to use
- For individuals or small companies
- Can encourage to register as a small business
- If then designate a procurement for the Reserve Program
 - Only such small businesses can compete for the award
 - All other procurement rules & procedures still apply

Small Business Reserve Program

22 Participating Agencies

- Departments of:

- Budget & Management
- Business & Economic Development
- Education
- Environment
- General Services
- Health & Mental Hygiene

- Departments of:

- Housing & Community Development
- Human Resources
- Juvenile Services
- Labor, Licensing & Regulation
- Natural Resources

Small Business Reserve Program

22 Participating Agencies

- Departments of:

- Public Safety & Correctional Services
- Transportation
- (Port Commission)
- State Police

- Independent Agencies

- Insurance Administration
- Lottery
- Morgan University
- Stadium Authority
- State Retirement
- State Treasurer
- University System of Md.