Audit Report

# Department of General Services
# Office of State Procurement

May 2023

**Public Notice**

**In compliance with the requirements of the State Government Article Section 2-1224(i), of the Annotated Code of Maryland, the Office of Legislative Audits has redacted cybersecurity findings and related auditee responses from this public report.**


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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
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Legislative Auditor

May 3, 2023

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Department of General Services (DGS) – Office of State Procurement (OSP) for the period beginning October 16, 2018 and ending October 31, 2021. OSP responsibilities include managing the centralized procurement of certain goods and services for State agencies and monitoring providers with procurement preferences.

Our audit disclosed that OSP has not adequately monitored the implementation of enhancements to the new Statewide eProcurement system – *eMaryland Marketplace Advantage (eMMA)*. Specifically, OSP did not obtain a comprehensive implementation plan at the beginning of the project and did not track contract expenditures to ensure that task orders for the project's development and implementation were not overspent. We believe that these issues have contributed to a multi-year delay in system implementation and note that while *eMMA* is now operational, all intended initial functionality is still in development. On March 6, 2019 the Board of Public Works approved a $38.2 million 10-year contract to develop, implement, and maintain *eMMA*. The new system includes several enhancements over the prior *eMaryland Marketplace* system including an interface with the State's Financial Management Information System (FMIS). As of February 2022 (three years through the ten-year contract period), disbursements related to this contract totaled $14.6 million or approximately 38 percent of the total contract value.

Our audit also disclosed deficiencies relating to OSP's Statewide procurement responsibilities. For example, OSP did not adequately monitor certain State

agency procurements that were specifically subject to its oversight. OSP established the Policy, Procurement Review, and Reporting Bureau (PRRB) to be responsible for conducting audits of delegated procurements at all State agencies.

As of April 2022, PRRB had not sufficiently audited State agencies' delegated procurement activity as required by State regulations and PRRB procedures. Specifically, PPRB only completed three delegated procurement audits dating back to October 2019, and our review of these audits disclosed that the scope of the audits did not include all delegated procurements and that the workpapers did not always support the conclusions in the respective report.

Additionally, OSP did not ensure that certain contract awards were published on *eMMA* as required. Furthermore, OSP did not properly monitor providers that, by State law, receive procurement preferences for State agency purchases. For example, OSP lacked documentation that it independently determined and published the fair market prices of goods and services available from Maryland Correctional Enterprises.

Also, OSP did not always conduct emergency procurements in compliance with State procurement regulations.

Furthermore, our audit disclosed a cybersecurity-related finding. However, in accordance with the State Government Article, Section 2-1224(i) of the Annotated Code of Maryland, we have redacted the finding from this audit report. Specifically, State law requires the Office of Legislative Audits to redact cybersecurity findings in a manner consistent with auditing best practices before the report is made available to the public. The term "cybersecurity" is defined in the State Finance and Procurement Article, Section 3A-301(b), and using our professional judgment we have determined that the redacted finding falls under the referenced definition. The specifics of the cybersecurity finding were previously communicated to those parties responsible for acting on our recommendations.

Finally, our audit included a review to determine the status of the six findings contained in our preceding audit report of the former DGS – Office of Procurement and Logistics (now OSP). For the non-cybersecurity-related findings we determined that OSP satisfactorily addressed one of those five findings. The remaining four findings are repeated in this report.

DGS' response to this audit, on behalf of OSP, is included as an appendix to this report. In accordance with State law, we have reviewed the response and, while OSP generally agrees with the recommendations in this report, we identified

certain instances in which statements in the response conflict with or disagree with the report findings. In each instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of our finding. In accordance with generally accepted government auditing standards, we have included "auditor's comments" within DGS' response to explain our position. However, consistent with the requirements of State law, we have redacted the elements of DGS' response related to the cybersecurity audit finding.

We will advise the Joint Audit and Evaluation Committee (JAEC) of any outstanding issues that we cannot resolve with OSP, including any involvement needed from the JAEC to clarify legislative expectations on establishing the necessary accountability over the Pricing and Selection Committee, a multi-agency State Committee. We continue to believe that it is both reasonable and natural for OSP to continue its past involvement with Maryland Correctional Enterprises commodity pricing. Furthermore, we believe that the DGS Secretary serving on the Committee and OSP providing staffing to the Committee further supports our position.

We wish to acknowledge the cooperation extended to us during the audit by DGS and OSP.

Respectfully submitted,



Gregory A. Hook, CPA
Legislative Auditor

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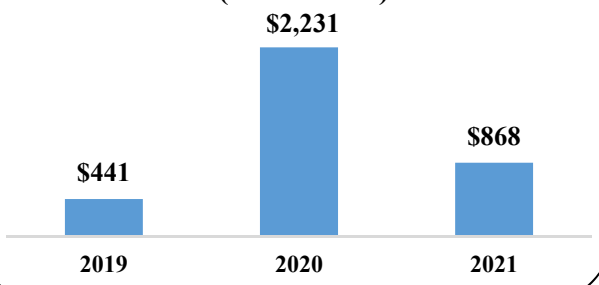
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# Background Information

## Agency Responsibilities

The Department of General Services (DGS) – Office of State Procurement (OSP) was created in response to several recent law changes and replaced the former DGS – Office of Procurement and Logistics. Specifically, Chapter 590, Laws of Maryland 2017, consolidated most State procurement activities within the Executive Branch under DGS, and created a Chief Procurement Officer to oversee the consolidated procurement activity. The law also transferred procurement personnel from the Departments of Budget and Management, Information Technology, and Public Safety and Correctional Services (capital construction) to DGS. Chapters 527 and 528, Laws of Maryland 2022, formally named the procurement unit within DGS the Office of State Procurement.

**Figure 1**
**OSP Statewide Procurement Activity**
**Fiscal Years 2019-2021**
**(In Millions)**




OSP's responsibilities include the procurement of contracts for commodities and services, and certain capital construction on behalf of State agencies. Commodities include a wide range of items including energy, fuel, vehicles, auto parts, office and cleaning supplies, medical supplies, equipment, and food. Services include architectural and engineering, construction, and facilities maintenance. According to the State's records, during fiscal year 2021, the value of Statewide procurements awarded by OSP totaled approximately $868 million. During the audit period OSP processed a significantly higher volume of procurement transactions due to the consolidation of procurement activity and the COVID-19 health pandemic (see Figure 1).

OSP's fiscal year 2022 appropriation provided for 85 employee positions. According to the State's records, during fiscal year 2022, OSP's expenditures totaled approximately $9.7 million (see Figure 2 on the following page).

**Figure 2**
**OSP Positions, Expenditures, and Funding Sources**

| Full-Time Equivalent Positions as of June 30, 2022 | | |
|---|---|---|
| | **Positions** | **Percent** |
| Filled | 78 | 91.8% |
| Vacant | 7 | 8.2% |
| **Total** | **85** | |

| Fiscal Year 2022 Expenditures | | |
|---|---|---|
| | **Expenditures** | **Percent** |
| Salaries, Wages, and Fringe Benefits | $9,140,434 | 94.6% |
| Technical and Special Fees | 179,919 | 1.9% |
| Operating Expenses | 338,075 | 3.5% |
| **Total** | **$9,658,428** | |

| Fiscal Year 2022 Funding Sources | | |
|---|---|---|
| | **Funding** | **Percent** |
| General Fund | $7,854,121 | 81.3% |
| Special Fund | 1,034,522 | 10.7% |
| Reimbursable Fund | 769,785 | 8.0% |
| **Total** | **$9,658,428** | |

Source: State financial and personnel records

## Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the six findings contained in our preceding audit report of the former DGS – Office of Procurement and Logistics (OPL) dated December 5, 2019 (OSP's responsibilities include OPL's functions and duties). As disclosed in Figure 3 on the following page, for the non-cybersecurity-related findings, we determined that OSP satisfactorily addressed one of those five findings. The remaining four findings are repeated in this report.

**Figure 3**
**Status of Preceding Findings**

| Preceding Finding | Finding Description | Implementation Status |
|---|---|---|
| Finding 1 | OPL did not adequately monitor certain State agency procurements that were specifically subject to its oversight. | **Repeated** (Current Finding 3) |
| Finding 2 | OPL did not publish contract awards totaling $37 million on *eMaryland Marketplace* (eMM), as required. | **Repeated** (Current Finding 2) |
| Finding 3 | OPL did not always provide prices for products available from Intergovernmental Cooperative Purchasing Agreements to State agencies. | Not repeated |
| Finding 4 | OPL did not establish comprehensive procedures for determining the fair market prices of goods and services available from Maryland Correctional Enterprises (MCE). Furthermore, OPL did not publish fair market prices of items available for purchase from MCE and the Blind Industries and Services of Maryland, as required. | **Repeated** (Current Finding 4) |
| Finding 5 | OPL did not adequately monitor the coordinating entity for the Employment Works Program to ensure that it met its responsibilities under the law. | **Repeated** (Current Finding 5) |
| Finding 6 | OPL did not periodically review system access to *eMM* and did not require periodic reviews of the *eMM* vendor to ensure the safeguarding and availability of the system. | Status Redacted[1] |

[1] Specific information on the current status of cybersecurity-related finding 6 has been redacted from this publicly available audit report in accordance with State Government Article, Section 2-1224(i) of the Annotated Code of Maryland.

# Findings and Recommendations

## eMaryland Marketplace Advantage

**Background**

In July 2017, the Department of General Services (DGS), Department of Budget and Management, and Department of Information Technology (DoIT) drafted a solicitation for the procurement and maintenance of a new eProcurement system. DGS, the Office of the Comptroller, and the State Treasurer's Office, evaluated vendor proposals and on March 6, 2019 the Board of Public Works approved a $38.2 million 10-year contract for development, implementation, and maintenance of this new system. The new eProcurement system is called *eMaryland Marketplace Advantage (eMMA)* and includes several enhancements over the prior *eMaryland Marketplace (eMM)* system including an interface with the State's Financial Management Information System (FMIS), document management, and search and reporting capabilities. As of February 2022 (three years through the ten-year contract period), disbursements related to this contract totaled $14.6 million or approximately 38 percent of the total contract value.

The new system was intended to address existing operational inefficiencies with *eMM*. The integration with FMIS was a feature included in the original *eMM* contract and was intended to address concerns noted in the 2007 Governor's Transition Report; however, *eMM*'s implementation stalled early in development and it was never interfaced with FMIS. As a result, employees were required to manually and redundantly enter information into both *eMM* and FMIS. *eMM* also lacked document management capabilities; and, therefore, vendors were required to upload the same documents for every procurement action. Additionally, *eMM* lacked robust search and reporting capabilities which limited comprehensive monitoring of Statewide purchasing activity and strategic sourcing efforts.

The current contract contains fixed-price and indefinite-quantity components. The fixed price components include *eMMA* implementation, software licensing, and optional features, while the indefinite-quantity components include hourly rates for labor categories to be used under work orders. The total contract value was comprised of $7.8 million for development and implementation during the first 2 years of the project, $14.9 million for operation and maintenance for the 10-year base period, and $15.5 million for value-added modules to perform other work associated with the implementation based on approved work orders (see Figure 4 on the following page). An example of a value-added module, which was not specifically included in the scope of the original contract, was a DGS – Office of State Procurement (OSP)-issued work order for the vendor to add invoicing capabilities to *eMMA*.

**Figure 4**
***eMMA* Contract Award**

| | Development and Implementation | Operation and Maintenance | Value-Added Modules* |
|---|---|---|---|
| Contract Year 1 | $6,385,563 | $1,431,800 | - |
| Contract Year 2 | 1,459,687 | 1,491,000 | - |
| Contract Year 3 | - | 1,491,000 | - |
| Contract Year 4 | - | 1,491,000 | - |
| Contract Years 5-10 | - | 8,946,000 | - |
| Value-Added Modules | - | - | $15,470,021 |
| Subtotals | $7,845,250 | $14,850,800 | $15,470,021 |
| **Total Contract Award** | | | **$38,166,071** |

*Value-Added Modules were included in the vendor's proposal, in addition to the core functionality used as the basis for the bid evaluation.

State laws and regulations generally provide that *eMMA* is to be used by State agencies, counties, municipalities, public institutions of higher education, local public school systems, and other certain entities to publish awards greater than $50,000. In addition, registered vendors may utilize *eMMA* to receive notices of bid opportunities and securely submit bids to the aforementioned entities.

**Finding 1**
**OSP did not ensure that the *eMMA* vendor had a comprehensive implementation plan and did not maintain sufficient records to track contract expenditures, which we believe may have contributed to project delays and increased costs.**

**Analysis**
OSP did not ensure that the *eMMA* vendor had a comprehensive implementation plan and did not maintain sufficient records to track contract expenditures. Consequently, major functionality of the new system has not been implemented, as the project completion has been delayed by more than 3 years while expenses continue to exceed initial estimates. As of February 2022, OSP has paid the *eMMA* vendor approximately 19 percent ($2.3 million) more than the projected costs from the vendor's contract.

OSP Did Not Obtain a Comprehensive Implementation Plan
As of February 2022, OSP had not obtained a comprehensive implementation plan from the vendor. Although not required by the contract, an implementation

plan is a best practice and was recommended in February 2021 by the independent consultant hired by DoIT to monitoring the system implementation. Such a plan is important because certain *eMMA* project milestones were dependent on one party completing tasks before the other party could begin the next task. For example, the vendor's integration of *eMMA* with FMIS depended on tasks performed by OSP.

The lack of a plan may have contributed to 6 of the 7 contract phases being delayed between 15 months and more than 3 years beyond the planned implementation date and major components of the contract, including enhanced functionality that has not been implemented. For example, per the vendor's approved proposal, the date for the final phase of system implementation was March 2020 and was to include the ability to initiate requisitions and purchase orders through *eMMA*. However, as of July 2022, the system has not been implemented and we were subsequently advised in February 2023 that OSP could not estimate when it would be completed.

In March 2019, prior to the start of the contract, the Board of Public Works (BPW) questioned the implementation timeline and whether sufficient detail was available in a formal plan to hold the vendor accountable for meeting specific deadlines. DGS testified to the BPW that while specific details on the implementation plan, such as, the specific people needed and the timeframe that work was to be completed, were not immediately available, it intended to obtain this information from the vendor. However, as of July 2022, OSP advised that it had not obtained the aforementioned information from the vendor. In addition, as noted above, DoIT's consultant responsible for monitoring the implementation also noted that the OSP did not maintain an integrated implementation schedule of all tasks performed by both OSP and the vendor.

OSP Did Not Adequately Monitor and Approve Vendor Charges

OSP did not prepare a comprehensive project budget spending plan until March 2020, one year after the contract was awarded and payments totaling approximately $5.1 million had been made. In accordance with the contract, the vendor was to be paid a fixed dollar amount for system maintenance and implementation of basic functions. The vendor was also to be paid an hourly rate for the implementation of added functions. Without a project spending plan, OSP lacked assurance that first year payments for maintenance and implementation costs were reasonable or consistent with the intent of the contract.

After the comprehensive project budget spending plan was prepared, OSP did not establish a process to track payments made to the vendor by work order (under the value-added module in use the work order process was used to identify specific

tasks to be performed). Consequently, OSP could not effectively or readily determine whether payments exceeded the approved cost proposed by the vendor in the approved task orders. Specifically, the vendor submitted invoices which contained labor hours for work performed and although the OSP contract monitor approved invoices, it was unclear how it was determined that the amounts paid were proper because the invoices did not reference a task order. OSP provided a separate schedule listing all payments with the associated work order, but advised us that this document was not utilized to ensure that work orders were not overspent. According to OSP records, as of March 2022, 36 work orders were processed for services valued at approximately $8.6 million.

**Recommendation 1**
**We recommend that OSP**

**a. coordinate with the vendor to ensure that a comprehensive implementation plan and schedule is maintained and accurately reflects responsibilities and resources of each party; and**
**b. establish a process to accurately track payments made to the vendor, based on individual deliverables, such as work orders.**

**Finding 2**
**OSP did not require certain bidders on State contracts to utilize available functions in *eMMA* to take advantage of security features intended to ensure the integrity of the bidding process and did not always publish contract awards as required.**

**Analysis**
OSP did not require certain bidders on State contracts to utilize available functions in *eMMA* to take advantage of security features intended to ensure the integrity of the bidding process and did not always publish contract awards as required. We tested 14 contract awards totaling $417.9 million initiated by OSP during the period from October 2018 through October 2021.

- We reviewed the bid submission process for 3 of the aforementioned 14 contracts and found that the bids for the 3 contracts were submitted through normal State email addresses instead of through eMMA. The contracts were for information technology and professional services totaling $80 million awarded between April 2020 and August 2020. While there is no law, regulation, or policy requiring the use of *eMMA* for submitting bids, *eMMA* provides enhanced security over the State email system, which would help ensure the integrity of the bidding process.

- OSP did not publish contract awards on *eMMA* as required by State procurement laws and regulations. As of February 2022, of the 14 contract awards tested, OSP had not published 4 of the awards totaling $99.3 million, and 6 other awards totaling $103.0 million were published between 41 and 738 days after the respective contracts were awarded. State procurement laws and regulations require awards for contracts greater than $50,000 to be published on *eMMA* not more than 30 days after the execution and approval of the contract. Publishing awards on *eMMA* provides transparency over State procurements, including information about winning bidders and the amount of the related awards.

A similar condition regarding publishing awards was commented upon in our two preceding audit reports dating back to 2016. In response to our prior report, DGS indicated that they would implement policies and new system functionalities within *eMMA*, and conduct training to begin internal procurement reviews by July 2021 to ensure all contract awards were posted. However, OSP management advised us that it did not consistently require compliance with this requirement or correctly utilize *eMMA*.

**Recommendation 2**
**We recommend that OSP**

**a. require bidders to utilize available functionality in *eMMA* to ensure bids are adequately secured, and**
**b. comply with State procurement laws and regulations by publishing contract awards on *eMMA* within 30 days of the contract award (repeat).**

## State Agency Procurement Monitoring

**Finding 3**
**OSP did not adequately monitor certain State agency procurements that were specifically subject to its oversight.**

**Analysis**
OSP did not adequately monitor certain State agency procurements that were specifically subject to its oversight. OSP established the Policy, Procurement Review, and Reporting Bureau (PRRB) in October 2019 to be responsible for conducting audits of delegated procurements at all State agencies. As permitted by State regulations, OSP delegated authority to State agencies for procurements under $50,000 (other than vehicle leases) and up to $200,000 for facilities

maintenance contracts and contracts to preferred providers.[2] According to State records, State agencies made 80,474 delegated procurements totaling approximately $4.5 billion during our audit period.

- Between October 2019 and April 2022, PRRB only completed audits of three State agencies' (Department of Natural Resources, Maryland Department of Health, and the Military Department) delegated procurement activity. State regulations and PRRB procedures require these audits to ensure procurements are proper, including the use of competitive procurement (a deficiency often cited in our fiscal compliance audit reports of State agencies).

  In addition, our review of the three audits that were conducted disclosed that workpapers did not always support the conclusions in the related audit report. For example, the workpapers supporting PRRB's audit of the Military Department noted that the procurement of one contract lacked required documentation, which included a list of vendors solicited and evidence that the winning vendor was authorized to do business in the State. However, the resulting PRRB report, dated December 2021, did not include a related finding or recommendation of necessary corrective action, nor did the workpapers include an explanation or justification for the omission of this finding.

- OSP did not use available reports from FMIS to ensure agencies obtained OSP approval for procurements that exceeded their delegated authority. Several recent OLA audits have noted instances in which agencies procured goods/services for amounts greater than its delegated dollar amount. See Exhibit 1 for a list of delegated procurement-related findings included in OLA audit reports between October 2019 and April 2022.

A similar condition regarding the lack of sufficient audits was commented upon in our three preceding audit reports dating back to 2013. In response to our prior report, OSP indicated that it would implement the recommended corrective action by December 2020. During our current review, OSP management advised us that they lacked sufficient personnel to conduct the required audits.

[2] Other individual agencies have been delegated specific authority for construction, services, and information technology contracts.

**Recommendation 3**
**We recommend that OSP**

a. **ensure that PRRB monitor agency procurements by conducting audits of delegated procurements in accordance with State regulations and its procedures (repeat). In this regard, PRRB should establish a schedule to ensure audits are conducted on a regular basis (such as once every three to four years);**
b. **ensure that PRRB's workpaper conclusions are consistent with the audit report or explained and that the audits are comprehensive (repeat); and**
c. **use available reports to ensure agencies obtain approval for all procurements that exceed their delegated authority.**

## Providers with Procurement Preferences

### Background

State laws and regulations provide for procurement preferences to benefit disadvantaged individuals or representative organizations. Specifically, State law provides that, when goods or services can be supplied at prices that do not exceed the prevailing market prices, State aided or controlled entities shall give procurement preferences to Maryland Correctional Enterprises (MCE), Blind Industries and Services of Maryland (BISM), the Employment Works Program (EWP), and individuals with disability-owned businesses.

**Finding 4**
**OSP lacked documentation that it independently determined and published the fair market prices of MCE goods and services.**

### Analysis

OSP lacked documentation that it independently determined and published the fair market prices of new and existing MCE goods and services. OSP published prices for all MCE goods and services, but could not document that these prices reflected the fair market prices. State laws and regulations require OSP to independently determine the fair market prices of MCE products, and to distribute a catalog of those products and fair market prices, at least annually, for State agency personnel to compare with MCE's established prices when making procurement decisions. We were advised by MCE that it currently offers approximately 900 different primary products, as well as variations to those products (such as multiple sizes). According to a report provided by MCE, during fiscal year 2021, State agencies posted procurement awards to MCE totaling approximately $50.1 million.

Similar conditions have been commented upon in our five preceding audit reports dating back to February 2007. In response to our prior audit, OSP indicated that it would convene a working group to discuss the feasibility of establishing procedures to independently determine and publish fair market prices of MCE's goods and services. OSP subsequently established procedures to verify the pricing in November 2020, however the procedures were not comprehensive as they did not describe the minimum number of items required to be sampled or other criteria for the selection (such as whether high dollar items should be chosen at a higher frequency), and as noted above the efforts were not documented.

Effective July 1, 2022, legislation was passed that transferred the authority for reviewing the pricing of commodities sold by MCE from OSP to the Pricing and Selection Committee (PSC) for Preferred Providers.[3] Given the DGS Secretary's involvement with the PSC, OSP providing staffing to the PSC, and OSP's continued role in publishing the prices, we believe it is appropriate for OSP to be the responsible State agency in this matter.

**Recommendation 4**
**We recommend that DGS through OSP, in its role as a member of the Pricing and Selection Committee for Preferred Providers,**

**a. perform independent documented reviews of the fair market value of existing and new MCE goods and services in a timely manner (repeat), and**

**b. modify its procedures for evaluating the fair market value of existing MCE goods and services to include guidance for the number of items to review and the materiality of those items.**

**Finding 5**
**OSP did not monitor Maryland Works to ensure it coordinated contracting activity in accordance with the EWP.**

**Analysis**
OSP did not monitor Maryland Works to ensure it coordinated contracting activity between the State and individuals with a disability-owned business or businesses operated in the interest of individuals with disabilities (collectively referred to as preferred providers). In accordance with State law, DGS designated

[3] PSC consists of five members: the Secretary of General Services, Secretary of Transportation, Secretary of Public Safety and Correctional Services, Secretary of Labor, and the Assistant Secretary Vocational Rehabilitation within the State Department of Education. PSC has historically been responsible for validating the pricing for goods and services provided by Blind Industries and Services of Maryland and through the Employment Works Program.

Maryland Works[4] as its coordinating entity (CE) to identify potential contracts for State procurement, establish procedures for the selection of preferred providers, provide training and assistance, and monitor preferred providers. According to State records, in fiscal year 2021, payments totaling approximately $10 million were made to 26 EWP preferred providers and payments to Maryland Works totaled $1.6 million.

We tested 18 of the 26 EWP preferred providers who received payments totaling $9.3 million that had been recommended by Maryland Works in fiscal year 2021. Our review disclosed that OSP had not ensured that the 18 providers were accredited by the Division of Rehabilitation Services of the Maryland State Department of Education. This accreditation ensures that the provider is operated by, or in the interest of, individuals with disabilities and is a Program participation eligibility requirement.

In addition, OSP did not obtain documentation from Maryland Works to support that the recommended contract award was in the best interest of the State. Such documentation would include Maryland Works' cost justification for recommending the provider. We acknowledge that such documentation is not a Program requirement, but since Maryland Works is paid a percentage of the recommended contract award amounts, we believe that it is critical to ensure that the recommended award is in the best interest of the State.

Similar conditions, including provider accreditation, have been commented upon in our three preceding audit reports dating back to 2013. In response to our prior report, OSP agreed to monitor the CE through designated personnel made available through a proposed organizational restructuring. During the current audit, we were advised by OSP management that although limited monitoring processes were in place, these processes did not address the above noted issues.

**Recommendation 5**
**We recommend that OSP monitor Maryland Works to ensure that it is fulfilling its CE responsibilities required by State law (repeat), including**

**a. ensuring providers recommended for contract awards are eligible for those awards, and**
**b. that cost justifications are in the best interest of the State.**

[4] According to its website, MD Works is a non-profit organization that promotes and develops employment and business ownership opportunities for people with disabilities and other barriers to employment and has been the coordinating entity (CE) since 1985.

## Information System Security and Control

We determined that Finding 6 related to "cybersecurity", as defined by the State Finance and Procurement Article, Section 3A-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following finding, including the analysis, related recommendation(s), along with DGS' responses, have been redacted from this report copy.

**Finding 6**
**Redacted cybersecurity-related finding.**

## Emergency Procurements

**Finding 7**
**During the COVID-19 pandemic, OSP did not always conduct emergency procurements in compliance with State procurement regulations.**

**Analysis**
OSP did not always conduct emergency procurements in compliance with State procurement regulations during the COVID-19 pandemic. Our test of four emergency procurements for commodities and information technology services valued at $54.9 million awarded between March 2020 and May 2021 disclosed that OSP could not provide documentation of the basis for the purchases (such as justification for the use of the emergency procurement method or how the vendors were identified). In addition, the related purchase orders did not include certain critical provisions required by State procurement regulations such as conformance with specifications, delivery and acceptance, liquidated damages, compliance with laws, anti-bribery statements, and registration of the business with the State Department of Assessments and Taxation.

OSP also did not report all emergency procurements to the Board of Public Works (BPW) as required. Specifically, our additional analysis of 129 emergency procurements valued at $110.4 million awarded from September 2020 through February 2022 disclosed 31 procurements valued at $32.2 million that were not reported to BPW as of March 2022.

State regulations authorize agencies to procure goods and services using the emergency procurement method when faced with an emergency, which is defined

as a sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or mitigate serious damage to public health, safety, or welfare. Emergency procurement regulations waive a key independent oversight control found in certain other State procurement processes – the submission of related contracts to BPW for formal approval prior to contract execution. Instead, agencies must report emergency procurements (including modifications) in excess of $50,000 to BPW within 45 days after the contract execution.

Our December 2021 report *Review of Certain Emergency Procurements Related to the State of Maryland's COVID-19 Response* noted similar conditions with multiple State agencies including DGS. For example, there was no formal written contract for certain procurements, the contracts for other procurements did not include all of the critical provisions required by State procurement regulations, and contracts were not always reported to BPW within the required timeframes.

**Recommendation 7**
**We recommend that OSP ensure compliance with State procurement regulations relating to emergency procurements by ensuring that**

**a. all documentation supporting the basis for the emergency procurement, such as, the justification for the emergency procurement and how the vendor is identified, is retained;**
**b. all critical provisions are included in the purchase orders; and**
**c. all emergency procurements are reported to BPW timely.**

# Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Department of General Services (DGS) – Office of State Procurement (OSP) for the period beginning October 16, 2018 and ending October 31, 2021. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OSP's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included procurement of commodities and maintenance, information technology, and professional services, *eMaryland Marketplace Advantage (eMMA)*, OSP's use of the State's Financial Management Information System for performing Statewide procurement functions, Intergovernmental Cooperative Purchasing Agreements, and preferred procurement providers. We also determined the status of the findings contained in our preceding audit report.

Our audit did not include certain support services provided to OSP by DGS – Office of the Secretary. These support services (such as payroll processing) are included within the scope of our audit of the DGS – Office of the Secretary.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of October 16, 2018 to October 31, 2021, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of OSP's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance

of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in a finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data). These extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit.

In addition, we extracted data from *eMMA* for the purpose of assessing user access. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

OSP's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records; effectiveness and efficiency of operations, including safeguarding of assets; and compliance with applicable laws, rules, and regulations are achieved. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to OSP, were considered by us during the course of this audit.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for

improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings related to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect OSP's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to OSP that did not warrant inclusion in this report.

State Government Article Section 2-1224(i) requires that we redact in a manner consistent with auditing best practices any cybersecurity findings before a report is made available to the public. This results in the issuance of two different versions of an audit report that contains cybersecurity findings – a redacted version for the public and an unredacted version for government officials responsible for acting on our audit recommendations.

The State Finance and Procurement Article, Section 3A-301(b), states that cybersecurity is defined as "processes or capabilities wherein systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation". Based on that definition, and in our professional judgment, we concluded that certain findings in this report fall under that definition. Consequently, for the publicly available audit report all specifics as to the nature of cybersecurity findings and required corrective actions have been redacted. We have determined that such aforementioned practices, and government auditing standards, support the redaction of this information from the public audit report. The specifics of these cybersecurity findings have been communicated to OSP and those parties responsible for acting on our recommendations in an unredacted audit report.

DGS' response to our findings and recommendations, on behalf of OSP, is included as an appendix to this report. Depending on the version of the audit report, responses to any cybersecurity findings may be redacted in accordance with State law. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise DGS regarding the results of our review of its response.

**Exhibit 1**
**Summary of Delegated Procurement Findings in OLA Audit Reports**
**Issued October 2019 to April 2022**
**Page 1 of 3**

| Audit Finding |
|---|
| **Department of Public Safety and Correctional Services (DPSCS) – Central Operations**<br>Report Dated November 20, 2019 |
| Finding 3 – DPSCS made repeated purchases of fresh produce and maintenance services without consolidating and appropriately soliciting competitive bids and executing written contracts. |
| Finding 4 – DPSCS did not always publish contract awards, as required by State procurement regulations, and artificially split certain purchases made with purchasing cards to avoid soliciting vendor bids. |
| **Maryland Department of Transportation – Maryland Aviation Administration (MAA)**<br>Report Dated December 12, 2019 |
| Finding 1 – MAA circumvented State procurement regulations by directing its parking services vendor to procure, at a total cost of $1.7 million, construction work for valet services and six customer service robots. |
| Finding 3 – MAA did not always document that bid openings were proper, and did not ensure contract awards were published on *eMaryland Marketplace* as required. |
| **Maryland Department of Health – Spring Grove Hospital Center (SGHC)**<br>Report Dated April 22, 2020 |
| Finding 1 – The invitation for bid for the purchase of dietary equipment costing $800,000 appeared to be tailored to a particular vendor. |
| Finding 2 – SGHC circumvented State procurement regulations and MDH procurement policies by artificially dividing procurements for goods and services to keep them under certain solicitation and delegation thresholds. In addition, SGHC did not always competitively procure or verify amounts paid on certain purchases, resulting in certain questionable activity and overpayments. |
| **Military Department**<br>Report Dated June 10, 2020 |
| Finding 2 – The Department divided purchases of certain equipment maintenance services into multiple procurements and inflated the value of certain purchase orders. |
| **Department of Housing and Community Development (DHCD)**<br>Report Dated July 10, 2020 |
| Finding 1 – DHCD did not always adhere to State procurement regulations with respect to solicitation documentation. DHCD also awarded two contracts for amounts substantially higher than the related bids prices contained in the proposals. |

**Exhibit 1 – continued**
**Summary of Delegated Procurement Findings in OLA Audit Reports**
**Issued October 2019 to April 2022**
**Page 2 of 3**

| Audit Finding |
|---|
| **Maryland Department of Transportation – Motor Vehicle Administration (MVA)**<br>Report Dated September 23, 2020 |
| Finding 9 – MVA did not have adequate safeguards in place to secure competitive bids that were electronically received and document that two employees were present for bid openings. |
| **Department of Human Services (DHS) – Office of the Secretary and Related Units**<br>Report Dated November 17, 2020 |
| Finding 4 – DHS did not always publish contract awards on *eMaryland Marketplace* as required by State procurement laws and regulations. |
| **Public Service Commission (PSC)**<br>Report Dated January 15, 2021 |
| Finding 2 – PSC did not obtain required control agency approval for three sole source contracts for consulting services totaling approximately $605,000. |
| **Maryland Department of Health – Regulatory Services**<br>Report Dated January 19, 2021 |
| Finding 6 – The Board of Dental Examiners did not comply with State procurement regulations when awarding two sole source contracts totaling $302,000 to a vendor for a new licensing system. |
| **Department of Natural Resources (DNR)**<br>Report Dated April 5, 2021 |
| Finding 6 – DNR did not always comply with State procurement regulations including documenting bid openings, retaining proposals, executing contracts, and publishing contract awards on *eMaryland Marketplace*. |
| **Office of the Public Defender (OPD)**<br>Report Dated August 10, 2021 |
| Finding 1 – OPD did not comply with State procurement laws and regulations when awarding two sole source IT contracts with expenditures totaling $960,000. |
| **Department of Juvenile Services (DJS)**<br>Report Dated September 2, 2021 |
| Finding 1 – DJS did not consolidate procurements and publish contract awards to maximize State purchasing power and enhance transparency, oversight, and control; and could not support certain contract modifications. |

**Exhibit 1 – continued**
**Summary of Delegated Procurement Findings in OLA Audit Reports**
**Issued October 2019 to April 2022**
**Page 3 of 3**

| Audit Finding |
|---|
| **Office of People's Counsel (OPC)**<br>Report Dated September 16, 2021 |
| Finding 1 – OPC did not obtain required approvals for five sole source contracts for consulting services totaling approximately $277,000. |
| Finding 2 – OPC did not always comply with State procurement regulations for competitive procurements. |
| **Maryland Department of Labor (MDL) – Office of the Secretary – Division of Administration – Division of Workforce Development and Adult Learning**<br>Report Dated January 7, 2022 |
| Finding 3 – MDL did not always obtain required Board of Public Works approval for contract modifications prior to execution and did not publish certain contract awards on *eMaryland Marketplace*, as required. |
| **State Lottery and Gaming Control Agency (SLGCA)**<br>Report Dated March 15, 2022 |
| Finding 5 – SLGCA did not always follow State procurement regulations and did not adequately monitor certain contracts. |
| **Department of Human Services – Local Department Operations**<br>Report Dated March 30, 2022 |
| Finding 6 – Local Department of Social Services contracts were not adequately monitored and sole source procurements were not adequately justified. |

**APPENDIX**

Maryland
DEPARTMENT OF
GENERAL SERVICES
Wes Moore, Governor · Aruna Miller, Lt. Governor · Atif Chaudhry, Secretary

April 26, 2023

Mr. Gregory A. Hook, CPA
Legislative Auditor
Office of Legislative Audits
The Warehouse at Camden Yards
351 West Camden Street, Suite 400
Baltimore, MD 21201

Dear Mr. Hook:

Thank you for your letter dated April 11, 2023 with the draft audit report of the Department of General Services Office of State Procurement for the period beginning October 16, 2018 and ending October 31, 2021. As requested, we are submitting our completed Agency Response Form in Microsoft Word format with this cover letter.

If you have any further questions or concerns, please feel free to contact myself or Jamie Tomaszewski, Chief Administrative Officer for the Office of State Procurement at Jamie.tomaszewski@maryland.gov or 410-260-7386.

Sincerely,

Atif Chaudhry
Secretary

Enclosures

cc: Michael F. Haifley, Acting Chief Procurement Officer, OSP
Nelson E. Reichart, Deputy Secretary, DGS
Chichi Nyagah-Nash, Chief Operating Officer, DGS
Jamie Tomaszewski, Chief Administrative Officer, OSP
Ellen Robertson, Legislative Liaison, DGS

# Department of General Services
# Office of State Procurement

## Agency Response Form

## eMaryland Marketplace Advantage

**Finding 1**
**OSP did not ensure that the *eMMA* vendor had a comprehensive implementation plan and did not maintain sufficient records to track contract expenditures, which we believe may have contributed to project delays and increased costs.**

**We recommend that OSP**

**a. coordinate with the vendor to ensure that a comprehensive implementation plan and schedule is maintained and accurately reflects responsibilities and resources of each party; and**

**b. establish a process to accurately track payments made to the vendor, based on individual deliverables, such as work orders.**

| Agency Response | |
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| **Analysis** | |
| **Please provide additional comments as deemed necessary.** | DGS would like to further clarify for context with additional information as noted below.<br><br>DGS originally had a comprehensive implementation plan at the beginning of eMMA project implementation; however, the plan has been re-baselined throughout the project, as needed, and all relevant stakeholders were informed and in agreement. The move to the MSProject project management software has improved the project, and the team will continue to track project progress using it as the tool. Additionally, the issues in this finding were addressed by the Independent Verification and Validation (IV&V) and have been corrected, although not noted in the finding.<br><br>**OSP did not ensure that the eMMA vendor had a comprehensive implementation plan.**<br>The issues were identified by the IV&V and process improvements have been implemented which addressed and rectified the concerns prior to the release of the audit. It was the opinion of the eMMA project team at the onset of the implementation that the system integrator's plan was sufficiently comprehensive. As time passed it was identified that tracking to the plan was inadequate and that gaps were being identified. Due to identified gaps, DGS agreed with the IV&Vs recommendation for a plan that would "maintain an integrated schedule that shows activities across all teams that are involved in deliverables for the |

## Agency Response Form

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| | project," and did deploy such a plan. In 2021, OSP hired a new Project Manager who worked with the system integrator in early 2022 to switch to a Microsoft Project software for project management planning and scheduling, which the eMMA team will maintain throughout the deployment. It is important to note that the IV&V continues to monitor the project plan and schedule.<br><br>**OSP did not maintain records to track contract expenditures.**<br>Invoices were received pertaining to each individual task order, which were reviewed for accuracy and completeness prior to approval. The project team was confident that they were able to confirm that the requisite work required for completeness was sufficiently identified and tracked. As the project grew and matured, DGS agreed with IV&V recommendations and developed a detailed contract expenditure tracking system. The invoices are reviewed by subject matter experts, the project manager, the procurement officer, and finally the OSP Business Services Manager for payment through the DGS Fiscal Services Division. There is an automated Smartsheet tracker that documents this workflow.<br><br>**Implementation of major features delayed more than 3 years.**<br>As with most large IT project deployments, schedules are impacted by many issues, which include an 18+ months delay during the COVID-19 pandemic for this project. Many issues came to play here, including the number of stakeholders that were involved. Since this type of system had not been developed and deployed in Maryland in more than 20 years, it would have been difficult for any system implementor to have the requisite knowledge to efficiently deploy this type of a comprehensive project. Additional complexities were identified during the implementation process that required added time to develop requisite solutions. |

**Auditor's Comment:** DGS asserts that a comprehensive implementation plan was provided at the beginning of the *eMMA* project. However, as noted in our analysis this statement is inaccurate, as evidenced by an independent consultant recommending the implementation of such a plan. Moreover, despite OLA's numerous requests for documentation of a comprehensive implementation plan during the course of the audit, one was not provided by DGS. Finally, OLA would like to highlight that DGS acknowledged in the response to Recommendation 1a that, "While DGS had an implementation plan from the beginning of the project, DGS agrees that the plan should have been more comprehensive."

# Department of General Services
# Office of State Procurement

## Agency Response Form

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| **Recommendation 1a** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | While DGS had an implementation plan from the beginning of the project, DGS agrees that the plan should have been more comprehensive. A more thorough plan may have prevented a discrepancy between the vendor's proposal and actual work execution. Specifically, the vendor's lack of Maryland process and policy knowledge resulted in several delivery gaps that were addressed via subordinate task orders. DGS would note that the Task/Work Orders were within the scope of the contract as they addressed gaps in the deliverables. In addition, the gaps associated with delivery effectively extended the delivery timeline for the base features. In all cases, incremental work efforts were accurately reflected in the annual Information Technology Project Request (ITPR) spend plans and re-baseline requests for the eMMA project. It is important to note that all invoices have been tracked, approved, and reconciled with the associated incremental task orders and statements of work, and OSP now has a comprehensive implementation plan based on the IV&V recommendations. | | |
| **Recommendation 1b** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | See responses noted above, we believe that all invoices have been tracked, approved, and reconciled with the associated incremental task orders and statements of work. | | |

**Finding 2**
**OSP did not require certain bidders on State contracts to utilize available functions in *eMMA* to take advantage of security features intended to ensure the integrity of the bidding process and did not always publish contract awards as required.**

**We recommend that OSP**

**a. require bidders to utilize available functionality in *eMMA* to ensure bids are adequately secured, and**

**b. comply with State procurement laws and regulations by publishing contract awards on *eMMA* within 30 days of the contract award (repeat).**

# Department of General Services
# Office of State Procurement

## Agency Response Form

| Agency Response | | | |
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| **Analysis** | | | |
| **Please provide additional comments as deemed necessary.** | DGS agrees that the use of eMMA as a tool to enhance and protect information is a good practice; however, it is important to note that some procurements and some procuring agencies will have valid reasons not to utilize eMMA as the portal for receiving bids. Given that it is not required by law or regulation for agencies to have vendors submit bids on eMMA, the background/analysis provided is somewhat unclear. As DGS OSP continues to implement eMMA and agencies become more familiar with its functionality, DGS OSP will create a policy to address bids being submitted electronically through the platform, as applicable. DGS does agree with the finding regarding the non-posting of awards and has taken actions to mitigate the issue. | | |
| **Recommendation 2a** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | Where DGS OSP is able to use the eMMA functionality to secure bids/proposals, it has and continues to utilize eMMA functionality as the implementation of additional functionality is available. Currently, secondary competition is not available in eMMA. Whether bids/proposals are received as a hard copy or electronically, there has always been a system in place to secure bids/proposals prior to the bid due date. While this is a feature that will be available to executive branch agencies once the eMMA implementation is completed, interfacing agencies and other users may not be able to utilize the function. We agree that there is efficiency realized in accepting bids via the tool; however, there is no statutory or regulatory mandate requiring use of the tool. While DGS OSP does not disagree that agencies should use the tool to its advantage, we also agree that "[w]hile there is no law, regulation, or policy requiring the use of eMMA for submitting bids, eMMA provides enhanced security over the State email system, which would help ensure the integrity of the bidding process." DGS will promote the use of eMMA for the acceptance of bids as a process improvement initiative. The full implementation roll out of eMMA to the agencies is staggered. Once all agencies are brought onboard to utilize eMMA's full functionality, DGS OSP will create a policy around the usage of eMMA to secure bids/proposals. | | |
| **Recommendation 2b** | Agree | **Estimated Completion Date:** | 12/1/2023 |
| **Please provide details of corrective action or explain disagreement.** | DGS agrees with this finding and has taken actions to mitigate it. In Spring 2022 DGS started the development of an internal audit program. On a monthly cycle, DGS has started to audit its procurements for completeness. As part of this audit process, the auditor is validating that contracts are posted on eMMA for award. Those results are shared with | | |

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| | OSP management and individuals who have failed to post awards, who are then counseled by their managers. Additionally, posting of awards is now included in employee proficiency reports and employees may be disciplined as appropriate if future awards are not posted. DGS has created a unit that performs reporting and analytics, which will assist the audit process by providing eMMA and ADPICS reports for validation. Posting contract awards in eMMA continues to be an issue for many agencies, including DGS, in part because of double-entries in ADPICS and eMMA. With the elimination of double-entries, the eMMA team is researching the possibility of adding the award posting to the approval workflow. If this proves to be a possibility, the award publication would happen automatically and will eliminate the issue. Until that time, DGS OSP will continue with its internal auditing and reporting processes. |

## State Agency Procurement Monitoring

**Finding 3**
**OSP did not adequately monitor certain State agency procurements that were specifically subject to its oversight.**

**We recommend that OSP**

a. **ensure that PRRB monitor agency procurements by conducting audits of delegated procurements in accordance with State regulations and its procedures (repeat). In this regard, PRRB should establish a schedule to ensure audits are conducted on a regular basis (such as once every three to four years);**
b. **ensure that PRRB's workpaper conclusions are consistent with the audit report or explained and that the audits are comprehensive (repeat); and**
c. **use available reports to ensure agencies obtain approval for all procurements that exceed their delegated authority.**

| **Agency Response** | | | |
|---|---|---|---|
| **Analysis** | | | |
| **Please provide additional comments as deemed necessary.** | | | |
| **Recommendation 3a** | Agree | **Estimated Completion Date:** | 12/1/2023 |

# Department of General Services
# Office of State Procurement

## Agency Response Form

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| **Please provide details of corrective action or explain disagreement.** | DGS agrees that improvement needs to be achieved and is evaluating various methodologies to ensure adequate monitoring of agency procurements. DGS OSP has many different review processes in place for agency procurement oversight: including monitoring processes for procurements that are not delegated; non-delegated procurements are reviewed prior to solicitation and again prior to award by DGS procurement officers; and delegated procurements over $200,000 are reviewed prior to award. DGS agrees that its oversight of delegated small procurements needs improvement. From the previous audit finding, DGS OSP worked with OLA on a plan for mitigating this issue and OLA agreed to the plan. As part of improving the process, DGS is adding resources to the unit and has developed an audit procedure and plan to be utilized in future audits. This will initially focus on delegated small procurements, as all other procurements are reviewed and approved by DGS staff prior to solicitation and then again before award. The recent development of an analytics unit within DGS OSP will provide comprehensive reports to give insight into other agencies' compliance. DGS believes that the agency audit cycle and compliance reporting will provide the necessary level of oversight. | | |
| **Recommendation 3b** | Agree | **Estimated Completion Date:** | 12/1/2023 |
| **Please provide details of corrective action or explain disagreement.** | This is part of the audit team's responsibility and will be defined in the updated audit plan and audit procedure documents. | | |
| **Recommendation 3c** | Agree | **Estimated Completion Date:** | 12/1/2023 |
| **Please provide details of corrective action or explain disagreement.** | The DGS analytics unit has created various agency monthly reports which DGS staff review and validate for each procurement, and more will be added as needed. DGS believes this requirement can, and will, be monitored through reporting. Actions will be taken when reports indicate issues and/or when DGS does its periodic scheduled on-sight audits. | | |

## Providers with Procurement Preferences

**Finding 4**
**OSP lacked documentation that it independently determined and published the fair market prices of MCE goods and services.**

**We recommend that DGS through OSP, in its role as a member of the Pricing and Selection Committee for Preferred Providers,**

## Agency Response Form

**a. perform independent documented reviews of the fair market value of existing and new MCE goods and services in a timely manner (repeat), and**

**b. modify its procedures for evaluating the fair market value of existing MCE goods and services to include guidance for the number of items to review and the materiality of those items.**

| Agency Response | |
|---|---|
| **Analysis** | |
| **Please provide additional comments as deemed necessary.** | DGS agrees with this finding; however, we believe the recommendations are moot. During the 2022 legislative session, per HB 723, Chapter 527, Laws of 2022, the applicable statute was modified and put the responsibilities noted above under the authority of the Pricing and Selection Committee (PSC) for Preferred Providers, including Maryland Correctional Enterprises (MCE). |

**Auditor's Comment:** DGS acknowledges that it lacked documentation of an independent determination and subsequent publication of the fair market prices of MCE goods and services, prior to July 1, 2022. In addition, as noted in the analysis, DGS did not have comprehensive procedures to verify the pricing. DGS disagrees with the related recommendations, citing a recent law change (that was disclosed in the audit finding analysis) that transferred the responsibility to a multi-agency State Committee. This Committee will not be subject to an individual OLA audit (as it is OLA's understanding that it does not exist as a budgetary unit of State government). Furthermore, this current situation seems contrary to the intent of the enhanced procurement authority granted to OSP by HB 723 (2022 Session). In this regard, written testimony submitted by DGS in support of HB 723 addressed the pricing Committee and stated that through this legislation, "There is an opportunity to establish appropriate language and procedures so as to increase not only the effectiveness of the OSP but also its transparency. One example of this is the creation of a more uniform process for Maryland's three (3) preferred providers to propose their prevailing average market prices based on the market average."

OLA concurs that effectiveness and transparency are important, but no more or less than accountability. Such accountability existed pre-HB 723 when OSP was solely responsible for pricing (in compliance with State law) and has been lost by assigning this function to a multi-agency Committee with a collective responsibility, but without a means to hold any one agency accountable. Therefore, we continue to believe that it is both reasonable and natural for OSP to continue its past involvement for MCE

commodity pricing as evidenced by the Secretary's role on, and OSP providing the staffing for, the Committee.

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| **Recommendation 4a** | Disagree | **Estimated Completion Date:** | N/A |
| **Please provide details of corrective action or explain disagreement.** | DGS believes that procedural changes are not necessary in DGS policy, since the applicable statute was changed during the 2022 legislative session to make the PSC for Preferred Providers the responsible party for reviewing and verifying the fair market value of existing and new MCE goods and services. Please see Correctional Services Article §3-515 (a) and (b) and State Finance and Procurement Articles §14-106 (f) (3) and §14-107 (1) (iii). | | |
| **Recommendation 4b** | Disagree | **Estimated Completion Date:** | N/A |
| **Please provide details of corrective action or explain disagreement.** | DGS believes that procedural changes are not necessary in DGS policy, since the applicable statute was changed in 2022 to make the PSC for Preferred Providers the responsible party for reviewing and verifying fair market value using the prevailing average market prices. Please see Correctional Services Article §3-515 (a) and (b) and State Finance and Procurement Articles §14-106 (f) (3) and §14-107 (1) (iii). | | |

**Finding 5**
**OSP did not monitor Maryland Works to ensure it coordinated contracting activity in accordance with the EWP.**

**We recommend that OSP monitor Maryland Works to ensure that it is fulfilling its CE responsibilities required by State law (repeat), including**
**a. ensuring providers recommended for contract awards are eligible for those awards, and**
**b. that cost justifications are in the best interest of the State.**

| **Agency Response** | | | |
|---|---|---|---|
| **Analysis** | | | |
| **Please provide additional comments as deemed necessary.** | | | |
| **Recommendation 5a** | Disagree | **Estimated Completion Date:** | N/A |

# Department of General Services
# Office of State Procurement

## Agency Response Form

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| **Please provide details of corrective action or explain disagreement.** | All vendors must be eligible Employment Works Program (EWP) vendors, which means they must be approved by the Department of Rehabilitative Services (DORS). DORS is technically the entity responsible for maintaining the list of eligible disabled vendors for the EWP. Accordingly, DGS relies on DORS to ensure the list of approved eligible disabled vendors for the EWP is continually updated and properly maintained. A representative of DORS is a member of the Pricing and Selection Committee (PSC) and, as such, reviews each award recommendation. Before approving each award, the PSC should verify the recommended awardee's status as an eligible DORS provider. |

**Auditor's Comment:** DGS disagrees that OSP is responsible for monitoring Maryland Works, the CE. As noted in the **Auditor's Comments** to our prior audit report finding on this subject, OLA continues to believe that since OSP is required to designate a CE to identify potential contracts for State procurement, establish procedures for the selection of preferred providers, provide training and assistance to participating providers, and monitor EWP preferred providers, it is reasonable to expect OSP to ensure providers recommended for contract awards are eligible for those awards.

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| **Recommendation 5b** | Disagree | **Estimated Completion Date:** | N/A |
| **Please provide details of corrective action or explain disagreement.** | The threshold for cost justification is "the fair market price of supplies, services and other sales" as per State Finance and Procurement Articles §14-106 (f) (8). The PSC has the responsibility for making the determination regarding "fair market prices". The PSC is made up of several different agencies of which DGS is just one participating member. DGS has no direct authority and is not responsible for controlling the committee as it relates to the cost justification. In accordance with the statute, if the price is determined to be "the fair market price" then it will be by default in the State's best interest. | | |

**Auditor's Comment**: DGS disagrees that OSP is responsible for monitoring the CE to ensure that cost justifications are in the best interest of the State because it asserts that this is the Pricing and Selection Committee's responsibility and not DGS. For the reasons set forth in the current **Auditor's Comment** for Finding 4 (and related recommendations), OLA continues to believe that OSP (DGS) should assume a significant role in the Committee's actions. In addition, DGS asserted that the cost justifications are in the best interest of the State because they were determined to be the fair market value, without documenting that the costs indeed represented fair market value.

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## Information System Security and Control

The Office of Legislative Audits (OLA) has determined that Finding 6 related to "cybersecurity", as defined by the State Finance and Procurement Article, Section 3A-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with State Government Article 2-1224(i). Although the specifics of the finding, including the analysis, related recommendations, along with DGS' responses, have been redacted from this report copy, DGS' responses indicated agreement with the finding and related recommendations.

**Finding 6**
**Redacted cybersecurity-related finding.**

**Agency Response has been redacted by OLA.**

## Emergency Procurements

**Finding 7**
**During the COVID-19 pandemic, OSP did not always conduct emergency procurements in compliance with State procurement regulations.**

**We recommend that OSP ensure compliance with State procurement regulations relating to emergency procurements by ensuring that**

**a. all documentation supporting the basis for the emergency procurement, such as, the justification for the emergency procurement and how the vendor is identified, is retained;**
**b. all critical provisions are included in the purchase orders; and**
**c. all emergency procurements are reported to BPW timely.**

| Agency Response | |
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| **Analysis** | |
| **Please provide additional comments as deemed necessary.** | The Department of Legislative Services' Office of Program Evaluation and Government Accountability conducted a special review of certain emergency procurements related to the State of Maryland's response to the COVID-19 pandemic. This review was initiated by the Office of Legislative Audits, and it represents an expansion of an earlier limited review that was undertaken based on a request from the chairs of the |

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| | Senate Education, Health, and Environmental Affairs and the House Health and Government Operations Committees for a review of two COVID-related emergency procurements. The report is dated December 13, 2021.<br><br>The methodology of that report stated that "Generally, the procurements were judgmentally selected based on our consideration of certain factors that may be indicative of significant violations of state Procurement laws or regulations." The conclusion of the report stated "Generally, from our review, we identified a lack of compliance with State regulations for emergency procurements…" The conclusion of the report is essentially the same as the finding above. As such, DGS also provided a response to the report which is a matter of record, but we will again respond to the similar finding in this audit.<br><br>The State of Maryland's COVID-19 response was organized around one core mission: to prevent as many deaths and hospitalizations as possible while ensuring that Marylanders can go about their normal business in a reopened economy safely. Maryland has been recognized as one of the best COVID-19 responses in the nation. Maryland moved aggressively early in the pandemic to undertake steps to ensure a robust response to address:<br><br>A. Ensure sufficient hospital capacity throughout the State;<br>B. Acquire adequate personal protective equipment and other medical equipment;<br>C. Set up the framework for access to COVID-19 tests;<br>D. Building a robust contact tracing infrastructure;<br>E. Creating a wide set of COVID-19 vaccine distribution channels to sustain one of the most successful vaccination initiatives in the nation.<br><br>The Department of General Services conducted its procurements as part of the statewide COVID-19 pandemic response based on the following principles:<br><br>1. Adherence to existing procurement law, regulations, and policies to the maximum extent possible – as demonstrated by review of legal sufficiency, competitive bids, and reporting to the Board of Public works (BPW); |

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| | 2. A focus on improving our business processes as shortcomings were identified.<br><br>Regarding the second principle above, as opposed to normal or traditional business processes of state government, the COVID-19 pandemic required actions that have not been undertaken in over a century, or perhaps never in the history of the State. | | |
| **Recommendation 7a** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | DGS partially agrees with this recommendation. DGS agrees with retaining procurement records and making a procurement officer's determination for using the emergency procurement method. However, the vendor selection may be as simple as they were the cheapest, the fastest to deliver to mitigate damages, the only one to respond, etc. and the "how" is not necessarily required to be separately documented in the procurement officer's determination.<br><br>In many cases DGS was buying from any, and all qualified vendors for PPE and ventilators as the supply chain basically did not exist. If a qualified vendor was found, and the products deemed genuine and appropriate for the needs of MDH, or whoever the requesting agency was, DGS OSP purchased the requisite quantity. There was a critical shortage of PPE and ventilators and therefore the rationale for purchasing was because we could get the products needed at a reasonable price from a qualified vendor. In some cases, the time delay between obtaining a quote and placing an order resulted in the product being sold to another entity before DGS could place an order for those supplies. Again, DGS had never before seen any such shortages in the supply chain for critical life-saving products.<br><br>For emergency procurements, COMAR technically does not require documenting the methodology in which a vendor is selected. COMAR 21.05.06.02C(1) does not specify a selection method or process but instead simply states that "[t]he procedure used shall assure that the required items are procured in time to meet the emergency." Since the basis of selection is not a required element in COMAR, it stands that any such documentation of the selection would also not be required. | | |

**Auditor's Comment:** OLA stresses that this response is erroneous and contradicts State procurement regulations, and specifically COMAR 21.05.06.02(D)(2), which require the record of each emergency procurement to include the basis and justification for the procurement, as well as the name of and basis for the selection of a particular contractor.

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| **Recommendation 7b** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | DGS concedes that certain procurements did not contain all of the clauses required under COMAR, however, it should be noted that under COMAR 21.05.06.02(D)(2), the guidance provided in regulation is "[a] record of each emergency procurement shall be made as soon as practicable and shall set forth…" The entirety of the state government was being asked to rise to meet the challenges posed by a world-wide health crisis, the likes of which had not been witnessed in over one hundred years. With supply chains completely gridlocked or collapsed, demand far exceeding supply, and no contingency planning for these types of global events, the "as soon as practicable" part of the regulation certainly provided the reasoning behind the strategies employed to acquire critical supplies and services. The emergency procurements were made in a streamlined and expedited way for Maryland to order and receive critical supplies that otherwise would not have been able to be obtained. It is important to note that these emergency procurements and their associated documentation were deemed legally sufficient by the Office of the Attorney General. | | |
| **Recommendation 7c** | Agree | **Estimated Completion Date:** | Completed |
| **Please provide details of corrective action or explain disagreement.** | DGS agrees in part with this recommendation that emergency procurements should be reported timely to the BPW; however, DGS has delegation from the BPW for all commodities contracts. Per COMAR 21.02.01.04.B (5), DGS has procurement delegation for ***All contracts for the purchase of commodities and supplies***, except for contracts for single items of equipment or single equipment leases in an amount over $200,000. This would include emergency procurements.<br><br>Never in the history of the BPW have emergency commodity contracts been reported to the BPW. There was much discussion about this change in policy and procedure during the pandemic. DGS did agree to report the emergency commodity contracts to the BPW in the spirit of transparency and oversight. Due to the volume of the emergency commodities procurements to be reported, DGS OSP worked with the BPW staff to create a format for presenting these procurements to the BPW. The effort to create a new process to accommodate this new reporting component was lengthy and time consuming, and meanwhile DGS OSP was still expected to continue to acquire critically needed supplies and services where, in many cases supplies were scarce. Due to health and public safety reasons, sourcing and acquiring the items were higher priorities than reporting commodities purchases to the BPW, when prior to the pandemic, that was never a requirement. The important aspect that should be noted is that in collaboration with the BPW staff | | |

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| | the procurements were reported. To summarize, DGS agrees that all applicable emergency procurements should be reported to the BPW in a timely manner. However, the emergency procurements for commodities purchased during the COVID-19 pandemic were not required to be presented to the BPW but were still presented for transparency. |

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