

ANNUAL REPORT FROM THE CONTRACTING AND PURCHASING ADVISORY COUNCIL

The following is provided in adherence with Title 29 [§ 6913](#) (d) (2) which requires an annual report to the Governor by December 31st of each year concerning the effectiveness of the State's procurement processes. This report shall include recommended changes to the State's procurement laws as may be necessary to improve the State's overall effectiveness.

Summary of Results

Through the end of FY2021, the My Marketplace (MMP) team received and posted 492 solicitations, which represents a 4% increase from the 474 FY2020 solicitations received from various agencies. However, reviewing all other active bid posts, which include addenda and any other documents posted to active bid, there were 1,371 processed items separately reviewed and posted items: down from 1,421 items in FY2020. Looking at the aggregated numbers, the MMP team posted 1,371 separate items, down 4% from the 1,421 aggregate items posted in FY2020.

As of the end of FY2021, there were 874 awarded contracts posted to the MMP site. This represents a 7% decrease from the 939 FY2020 awarded contracts posted. And in FY2019 there were 785 awarded contracts posted to MMP.

Vendor Outreach communication performed in FY2021, by the Central Contracting team of Government Support Services (GSS), totaled 63,482 notices sent to individual firms and represents a 13% increase from FY2020. 665 Outreach notifications were directly to Delaware businesses, a decrease of 21% over the previous year period.

As of the end of FY2021, there were 13,138 vendors signed up to receive notification from the State of Delaware's Bid Notification system. This represents an increase of 1,027 or an 8% increase compared to 12,111 unique vendors signed up at the end of FY2020.

Through the end of FY2021, spend with GSS central contracts decreased approximately 0.2% to \$278,480,233, which compares with \$279,143,942 in FY2020. Of the reported FY2021 central contract spend, approximately 15% was spent by school districts at \$42,466,737.

For FY2021, GSS realized savings of \$15,540 for agencies through the I Found It Cheaper review process; a decrease of 67% from savings of \$47,409 for agencies in FY2020.

In FY2021, the State of Delaware spent \$679.3 Million with the Supplier Diversity and Small Business communities. This is an increase of 44% over FY2020.

I. Overview of 2021 Contracting and Procurement Activities

Coronavirus Response Activities – Ongoing

GSS Central Contracting publicly bids solicitations, negotiates and awards contracts for use statewide. After award, the team performs contract management throughout the life of the contract. Purchasing the goods or services is decentralized and typically performed at the Agency level as needed. In this time of critical need however, the GSS Contracting Team became a robust purchasing entity representing the needs of Public Health and the Emergency Operations Center managing the pandemic. When normal supply chain vendors identified unavailable products, the GSS Contract Team worked across market verticals and purchased the needed supplies.

Throughout 2021, as the pandemic evolved, the GSS Contracting team moved from a first engagement team sourcing for agencies to a secondary partner and performing tasks on request. To this end, the team remained responsive to finding and sourcing critical needs but then shifted to a more 'normal' post-pandemic stance where it serves as agency support. By example of a return to normal, the team bid and awarded a contract to review the state's response to the COVID-19 pandemic through the completion of a multi-agency after action review and report. This activity is consistent with performance on demand when required to help an agency.

Professional Development of Contracting Personnel

The GSS team members belong to the National Institute of Government Procurement (NIGP), National Association of State Procurement Officials (NASPO), the National Procurement Institute (NPI), and the National Contract Management Association (NCMA). These organizations promote the professional development of procurement individuals and provide access to other procurement personnel and resources. These resources include professional forums in which to query and learn about markets, procurement issues and challenges, and provide educational resources including access to conferences as well as live and/or electronic training webinars. They also provide access to participate in the development and award of cooperative contracts that allow Delaware to take advantage of greater volume discounts due to national aggregation of spend across all participating members.

Personnel from several agencies belong to the Delaware Public Procurement Association (DPPA). Agencies represented within the organization include Department of Safety and Homeland Security (DSHS), Department of Correction (DOC) and the New Castle County government.

In July 2021, nine (9) Delaware team members participated in the NASPO Regional Education and Connection Hub (REACH) Conference held virtually. This conference leverages the collective experience of state procurement staff across all four regions to expand the sharing of education, best practices, and innovative approaches to state procurement. All four NASPO regions of the country participated in this national conference.

GSS had planned to send two (2) representatives to the 2021 NASPO Annual Conference, in Austin, TX, but instead attended virtually with the GSS Deputy Director and State Contract Procurement Administrator attending. The GSS Deputy Director also served as member of the Annual Conference Planning Committee.

The NASPO sponsored Law Institute scheduled in November 2021 was attended by two Deputy Attorney General. Additionally, other legal staff were able to attend virtually. The Conference focuses on legal concepts and connections in state government procurement.

Additionally, The National Procurement Institute awarded GSS the 2021 Achievement of Excellence in Procurement Award. This is the sixth consecutive year GSS has received this acknowledgement. GSS has plans to submit a nomination for the 2022 award and anticipates future participation in the 2022 conference that will be scheduled.

During the past year, the GSS State Contract Procurement Supervisor, Courtney McCarty, has served in as the NASPO Eastern Region Vice Chair and will continue to serve in this capacity through 2022.

The GSS Deputy Director serves on the NASPO Professional Development Committee and the Annual Conference Planning Committee. In 2021, the [International Association for Continuing Education and Training \(IACET\)](#) has awarded the [National Association of State Procurement Officials \(NASPO\)](#) the prestigious Accredited Provider accreditation. IACET Accredited Providers are the only organizations approved to offer IACET Continuing Education Units (CEUs). The accreditation period extends for five years and includes all programs offered or created during that time. As the Delaware team regular attends and/or participates in NASPO Procurement U training classes, this demonstrates an on-going interest in furthering procurement education for the team. Every State Contract Procurement Officer is offered and/or assigned some number of classes to ensure continuing education. The NASPO representation further demonstrates the State of Delaware's leadership position within the public procurement arena. (All conference attendance expenses are covered by the national organization support in fulfillment of their mission to advance the public procurement profession.)

Currently, 1 GSS team member holds nationally recognized professional procurement certifications as:

- 1 – Certified Public Procurement Officer (CPPO)

Further, personnel from other agencies with professional certification include representatives from the following:

- 1 – DTI (CPPB & CPPO)

State Training and Professional Development

Over the past several years, GSS has established and continues to deliver training aimed at educating both Agencies and Vendors on procurement Code, processes, templates, methodologies, use of the transparent sharing of contracts and related utilization data, and the state's checkbook and procurement card spend information. Trainings created and delivered include Vendor Day, "Selling to the State", Procurement Basics and Formal Procurements presentations. To date, GSS has presented the following agency programs:

- Procurement Basics – twenty-four (24) classes with 711 attendees
- Formal Procurements 1 – sixteen (16) classes with 511 attendees

- Formal Procurements 2 – sixteen (16) classes with 416 attendees

Agency-level trainings consist of the Procurement Basics, Formal Procurements 1 and Formal Procurements 2 and are typically held at 100 Enterprise Place in Dover. In response to social distancing requirements, classes have transitioned to virtual only and hybrid (simultaneous virtual and in-person) formats to continue offering the essential training.

The Vendor Day presentations are vendor centric events. Chambers of Commerce across the State continue to recognize the value of these trainings host the majority of events. To date, GSS has presented Vendor Day 43 times to 1,079 attendees from 1,143 businesses, In CY2021, GSS presented Vendor Day two (2) times to a total of 82 attendees from 63 businesses.

Contracts to Watch, a new government to business educational opportunity initiated by GSS in August of 2017 has been revamped and combined with Vendor Day into a two-day platform for 2021 to take advantage of significantly higher attendance for greater exposure.

The positive impact of Vendor Day on the local business community is considerable. As tracked and reported by the Delaware Procurement Technical Assistance Center, a federally funded program operating within the University of Delaware, prior to the implementation of the GSS education program in 2013 only 27 DE PTAC clients held contracts with the State of Delaware. At the end of CY2021 there were 295 DE PTAC clients holding a contract with the State.

The central contracting team continues to provide educational assistance to any agency that has questions about contracting policy or procedures. In FY2022, Government Support Services provided over 82 unique and in-depth assistance efforts to agencies ranging from procedural questions to solicitation reviews. This agency assistance number is in addition to the hundreds of individual questions that are directed at GSS on an annual basis.

GSS procurement training is a service in high demand, having trained to date, 1,638 agency employees, and 1,844 vendors. Currently managed as an additional responsibility for a GSS State Contract Procurement Supervisor, the increased demand now requires assistance from an additional Management Analyst II as an assistant trainer. In addition, all other State Contract Procurement Officers rotate through the training delivery schedule. This is a significant time demand on the procurement staff, but this regular activity educates the state buyers, and promotes interest in state bids, represents an on-going business development opportunity, and shares certification information for small and diverse owned and operated business enterprises.

In CY2021, GSS nominated one individual to participate in national cooperative contracting efforts; The individual contributed towards contracts for computers and eProcurement. The goal is to not only allow the participant to learn from the experience but allow them to bring back ideas with which to suggest additional teaching to co-workers and/or process improvements for Delaware's best practices.

Vendor and Constituent Education

GSS has shown continued commitment to delivering Vendor Day presentations adapting virtually in 2020. The training was then completely rewritten into two consecutive virtual Webex sessions with great success. Interestingly, the average class size was doubled for the virtual sessions compared to the in-person sessions conducted. This demonstrated expansion of

external training opportunities with the new format. In CY2021 two virtual Vendor Days expanded sessions continued to support much higher attendance than past in-person offerings. While these presentations are aimed at formal procurements and response to bid solicitations, vendors are also shown how to market and seek under threshold sales to agencies. Further, resources are provided that show businesses how to utilize the free information provided through the MMP website to evaluate business intelligence and make better business decisions. Additionally, expanding the presentations to a two-day format and consolidating information from now discontinued Contracts to Watch sessions has provided this larger audience with a broader scope of information. Response to these changes has been overwhelmingly positive from the vendor community, including feedback that this format has given them an understanding of the “whole picture” of doing business with the State for the first time.

In CY2021, GSS has presented the following vendor programs:

- Vendor Day –two (2) classes with 82 attendees from 63 vendors in attendance
- Contracts to Watch which affords one-to-one communication between businesses was suspended for eleven months of CY2020 and all CY2021 due to Covid-19. The content for this program has been absorbed into the new two-day format of the Vendor Days program.

In general, these trainings have several primary goals:

1. Vendor participation and engagement,
2. Economic Business Development,
3. Education,
4. Transparency in Government (as it relates to Contracting),
5. OSD Training and Education, and
6. Community Building.

Each of the Vendor Day presentations is demonstrated in partnership with the Office of Supplier Diversity (OSD). The educational training provides information on how to access resources with the GSS and OMB websites, including www.mymarketplace.delaware.gov, the OSD website, and individual agency websites. By using OSD participation, the central contract team is always looking to expand the diversity of vendors bidding on contracts, demonstrate opportunity and meet goals that benefit the business community without requiring mandates or quotas. This activity is in support of the Governor Carney’s Executive Order 49.

GSS also makes these same resources available through the MMP website by providing a copy of the Vendor Day presentation. Other resources are also provided including contract identification and awarded vendors, contract utilization, procurement thresholds, GSS FAQ’s, procedures, flowcharts and more.

GSS continues to broadcast information and its procurement presentation via an on-site video screen installed at its 100 Enterprise Place office in the reception space and waiting area. As GSS conference and training rooms are frequently utilized by many agencies beyond OMB. The flat screen displays a spooling look of the Vendor Day training material slide deck and other GSS information.

By providing this information, GSS believes it is promoting transparency to the vendor community and any citizen interested in learning about operations and/or contracting. This same transparency has generated some cost avoidance for GSS. If the information is already public and available, there is no need to complete some Freedom of Information Act requests

presented by vendors and/or constituents. This potentially frees up valuable resources to keep advancing the GSS and contracting directives.

Upon contract award, GSS provides a structured Award Notice which includes vendor information, pricing, ordering, contract utilization and contract specific terms. GSS would like to institute, through a policy directive with Executive level support, a requirement that all Agencies produce this information in a standardized and consistent format to improve the overall procurement processes of the State and to promote economic transparency and opportunities.

In FY2021 the state spent \$679.3M with the diverse and small business community. Of that spend amount \$111M was to the certified diversity community.

Public works opportunities are posted monthly to the My Marketplace website, Results Delaware tab, under Public Works Opportunities, accessible through at this link: [Public Works Opportunities](#). Minor Capitol Improvement funding managed by the Office of Management & Budget by the Division of Facilities Management (DFM) is identified by fiscal year, as well as number of construction projects currently underway.

Inclusion on a National Level

Chief Procurement Officer and GSS Director, Dean Stotler, previously served on the NASPO Board of Directors, and as the President of the NASPO Board of Directors and remains active on the national level. His prior leadership has provided a roadmap for the national organization's future. Peter Korolyk, GSS Deputy Director, has served previously served on the NASPO Board of Directors since 2016 and served through the end of 2020. He also served as the Eastern Region Chair for 2016 to 2018 and as the NASPO Eastern Region Vice Chair serving 2019 and through the end of the 2020 term. The State Contract Procurement Supervisor, Courtney McCarty, now serves as the Eastern Region Vice Chair through the end of CY2022.

Numerous other staff participate in the NASPO organization, including the Contract Supervisors, several Contract Officers, the former Executive Director of the OSD, and Deputy Attorneys General. Participation of the GSS team at this national level includes NASPO Eastern Region meetings, the Green Purchasing Committee, NVP contract sourcing teams, the Professional Development Committee and the Strategic, Best Practices Committee, Procurement University, Intergovernmental Relations Committee, and the Annual National Conference. There also continues to be engagement opportunities in the daily communications between and among all state members through the NASPO Network and Director's Community portals where members share knowledge regularly.

In prior years, several GSS team members served on the State and Local Government Procurement, A Practical Guide editorial team. The Guide is intended to serve as a quick reference insight guide into proper contracting processes. This updated Guide has been provided as a resource to partners looking to learn about procurement but also as a training resource for current professionals to obtain their national certification(s).

II. Contracting by the Numbers and Efficiency of Operations

	As of December 31, 2021	
	# of Contracts	FY2021 Spend
Contracts	874	
Agency Contracts	626	
Central Contracts	248	\$278,480,233
# of Cooperative Contracts *	43	\$82,012,487
# of Delegated Contracts *	14	
# of Set-Aside Contracts *	5	\$7,337,620
School Spend on Central Contracts		\$42,466,737

* The # of Central Contracts includes the Cooperative Contracts, Delegated Contracts and Set-Aside Contracts. Further, each of these Contracts may be split between Professional Services and Material/Non-Professional Services.

	Active During FY2021	% of Contracts
Total # of Contracts Active During FY2021	1,308	
# of Agency Contracts Active During FY2021	1,024	78%
# of Central Contracts Active During FY2021	284	22%

For FY2021, GSS received and/or reviewed 52 total I Found It Cheaper (IFIC) requests. Through the process of waiving the contract or negotiating with a current vendor to accept a lower price, the state realized savings of \$15,540.

GSS operates the Copier Resource Management Program. For CY2021, this program saved \$667,968 dollars. This savings was generated by “right-sizing” current equipment, blocking unnecessary requests, and generating income from selling unnecessary inventory through surplus. Since the program began in 2011, GSS has been able to realize over \$11.9M in savings. Further, a new copier/multi-function contract entered in 2019 with more favorable toner allowances and servicing standards has saved even more money for the state.

In FY2021 the State of Delaware spent \$679.3M with the Supplier Diversity and Small Business communities. This is inclusive of the OSD and SBF certified businesses, W9 self-identified businesses, and awarded contract Tier II spend on GSS Contracts as well as inclusive of DeIDOT certified DBEs. Newly included in OSD reporting since FY2016 is the Delaware State Housing Authority (DSHA) spend. DSHA has their own checkbook, and their reporting was not previously captured.

	FY2021
Direct spend with OSD Certified firms (includes DSHA) + W9	\$299,796,584
Indirect spend. Tier II	\$26,365,164
Total Supplier Diversity spend (include W9, OSD & Tier II)	\$326,161,748
Direct Small Business spend with W9 + SBF Certified firms	\$353,129,561
TOTAL (all diverse & small)	\$679,291,309

You can review more detail about spend with the Supplier Diversity and Small Business Focus community in the OSD quarterly and Annual Reports at the [Division of Small Business](#), by searching for OSD reporting.

Process Improvements

GSS has provided recommended boilerplate solicitation documents that have been posted to the GSS MMP website. These boilerplates are regularly evaluated and updated to ensure stated terms are protecting best interests of the State. In November 2019, GSS completed comprehensive updates to 13 different standard boilerplate templates, which are updated based on changes in Delaware Code, regulation and/or policy. Agencies surveyed in 2018 identified positively 87% of the time to GSS responsiveness for their procurement questions or concerns.

By example, 29 *Del. C.* §6987 was amended to allow for Section approval of cooperative contract when seeking to obtain professional services bid by an outside public entity. This creates a uniform review and oversight by GSS, allowing central procurement to guide agencies, aggregate contract utilization and to use the information obtained for future bid opportunities. Government Support Services then provided a template for agency use when seeking approval and asks questions that requires the agency to complete a suitable amount of due diligence prior to receiving Section approval.

In 2020, GSS began central technology contract transition after the passing of Senate Bill 153, amending Delaware Code Chapter 90C, Title 29. GSS is actively supporting the Department of Technology and Information as it established a statewide shared technology services model to facilitate digital government for citizens to increase efficiency and control security risks. In 2020, contract management of twelve (12) technology contract was transferred from GSS Contracting to DTI Procurement with GSS continuing to provide ongoing process guidance and best practices templates.

Although some agencies operate independent contracting teams (i.e. DelDOT, DOC, DHSS, K12 – Data Service Center), not all agencies operate or are familiar with current contract terms, conditions and boilerplates. By making these documents available, GSS is protecting the best interest of the State and attempting to ensure unnecessary exposure to liability. It is GSS's intent to have all Agencies use the statewide templates as best practice templates to eliminate redundancy of effort for maintaining statutory changes and best practice language but also to provide the vendor community a standardized format to work with when dealing with any Agency of the State.

GSS continues to work toward the improving utilization of the state's eMarketplace solution. The portal offers a streamlined sort, shop and compare experience for users, and will also have more accurate tracking for contract utilization. At the end of CY 2021, the eMarketplace

contained 113 vendor catalogs and held 4.3 million separately identified hosted catalog items and processed over \$36 Million in purchases.

Recognition

In CY2021, seven (4) public entities located outside the State of Delaware sought and received permission to utilize the GSS centrally managed contracts. This is a confirmation of the value of the award offered, but is also of value to the awarded vendor, as there is more opportunity to sell products through a competitively awarded offering. Although this is something GSS has only focused on recently, it has become part of standard vendor communication; GSS will identify this opportunity to vendors to encourage their participation in the central contract procurement process. This brings to thirty-six (36), the number of non-Delaware public entities that have been given authority to procure from GSS, State of Delaware awarded contracts since 2011.

Government Support Services has been awarded the Annual Achievement of Excellence in Procurement for 2021 from the National Procurement Institute (NPI). This is the sixth year in a row that Government Support Services has received this award. NPI is recognized as the public sector affiliate of purchasing for federal, state, county, and municipal government entities, public school systems, universities, and other public and nonprofit institutions in the United States. This award recognizes public and non-profit organizations that obtain the highest standards of innovation, professionalism, e-procurement, productivity, and leadership at the national level.

III. Moving forward

Establishing Standards

GSS previously created, posted and continues to update and maintain a Policies and Procedures manual which is accessible to any agency engaged in contracting activities.

As previously disclosed GSS has provided recommended boilerplates and posted them to the GSS MMP website. The goal is to ensure that all pertinent and required clauses have been captured and included in one set of standard boilerplates. By providing a standard series of boilerplates across agencies, GSS hopes to minimize duplication of efforts for individual contracting and legal teams. While some language may be different between different types of procurements, the form and format of the boilerplates could be similar. Vendors would see a consistent standard utilized by all contracting agencies which should improve their acceptance and 'comfort' with standard documents across the state agencies.

Once a standard process and/or wording has been developed and accepted by policy and/or legal review, GSS will continue to update these boilerplate documents and continue to 'broadcast' these changes to agencies. Further, GSS will continue to provide assistance to agencies that do not regularly contract for material and/or services.

The MMP Supervisor continues to review and prescreen all solicitations submitted for posting to the state's Bids Directory. The goal is to make sure that each agency has correct requisite language and code references for their procurements and thereby, limit their liability and protect against protest. Further, some solicitations are subject to secondary review and approval by outside agencies (i.e. internal business case review and approval by DTI), and the MMP review ensures these internal processes are adhered to for consistency in the solicitation processes.

Process Improvement

GSS has continued to work with the Division of Facilities Management and will continue to recommend and promote the adoption of “Best Value” in public works, and other maintenance related service contracts. As GSS has advanced best value procurement for IT related contracts, the leadership team hopes to make this same concept applicable to the Public Works arena. Additionally, the efforts will also focus on making the Prime Contractor responsible for key target dates and adherence to contractual terms. This effort should reduce the state’s exposure to cost overruns and allow for more efficient and timely construction efforts.

The central contracting team will move to have some deficiencies in Delaware Code and/or regulation clarified through policy, regulation or law. Topics to be included are:

- Clarifying FOIA limitations in Professional Services and Public Works,
- Advertisement of Sole Source Procurements,
- Establish a GSS database for Sole Source Procurements and publish on state’s central contract publication portal, ¹
- Requirement for agencies to advertise in electronic format; moving direction from Epilogue language to DE Code,
- Address GSA limitation to materiel only, and look to include access to services,
- Advertise intent to participate in cooperative contracts,
- Advertise under threshold opportunities.

The success by DFM to utilize the Design/Build process for Public Works should be more widely considered. Design/Build can be an effective and efficient contract delivery method when the project scope is clearly defined and there is lump sum funding available at project onset (no phased funding). The decision to previously limit this construction process in the past was due to unequal market access by select contractors which prevented fair access for all vendors to bid opportunities. This negatively impacted the state’s bargaining position, and it was determined to limit this construction process, and only with Legislative approval. The demonstrated success by the Division of Facilities Management to obtain efficient and cost-effective construction for Design/Build projects should encourage re-examination of the limits to this construction process.

Active GSS participation implementing a SaaS solution for the eProcurement solution, GSS has first-hand knowledge of the limitations for funding and XaaS (anything as a Service) solutions. This knowledge will allow for a more collaborative partnership with DTI and agency project managers to create a more comprehensive implementation strategy for large IT programs and contracts. In FY2016, GSS began and currently continues to hold regularly scheduled meetings

¹ As identified in the Division of Accounting Policies and Procedures Manual, page 8, item 2, “A contract may be awarded without competition if the agency head, prior to the procurement, determines in writing there is only one source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence there is only one source for the required contract, and no other type of goods or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this subsection. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency for the sole source procurement shall be included in the agency’s contract file. (29 Del. C. §6904(i)) *A copy of any such declaration shall also be forwarded to GSS with the contract documents for publication on the central contract portal. GSS serves as a clearinghouse for procurement information for materiel and services for both agencies and vendors (29 Del. C., §6908(a) (4)).*”

with DTI to ensure that future needs are considered with sufficient time to allow for the appropriate procurement to meet the state's technology needs. Further, the meetings also allow for advances in technology and the terms and conditions can be managed on a proactive basis.

In FY2020, with input, review and comment from GSS Contracting and in support of DTI, the Legislature moved forward with additions to the Delaware Code. This included:

- Greater ownership and oversight of technology procurement transferred to the Department of Technology and Information, including the ability to have greater oversight for technology cooperative procurement, via [SB 153](#)

GSS began meeting with DTI in late July 2019 and continues to transition enterprise technology contracts to DTI personnel for contract management and administration. CY2021 ended with twelve (12) technology contracts transitioning to DTI within a collaborative process as DTI re-organizes its team(s) to accept the new responsibilities.

Training for Contracting Teams

GSS continues to promote a variety of professional certifications for team members including, but not limited to:

- CPPB,
- CPPO,
- Six Sigma (allowing for Yellow, Green or Black Belt training(s)),
- Leadership in Energy and Environmental Design (LEED),
- Certified Professional in Supply Management (CPSM)

As part of the Section's NASPO membership, staff receive access to trainings on Procurement U, NASPO's procurement-oriented training resource site. In CY2020, 106 unique training events were completed by the procurement staff.

In 2021, each GSS procurement professional has maintained their membership in the National Contract Management Association (NCMA). Access to NCMA information and materials provides the central contracting team with another resource to improve Contract Management and Administration for central contracts and disseminate training to state agencies.

The central contract team will continue to conduct and promote the Vendor and Formal Procurement presentations, as demonstrated in FY2018 and beyond, and has continued to add off-site presentations to regular schedule.

GSS has created and waits for final executive authority before plans to move forward with state-wide training for any and all agencies that have contract signing authority. This will make use of the Learning Management award, ensure standardization of procurement methodology and ultimately, look to limit liability for the state in its procurement efforts.

Communication

GSS continues to promote vendors to register with the free Vendor Notification System. At the end of FY2021, the MMP team had 13,138 vendors signed up to receive notification from the State of Delaware's Bid Notification system. This represents an increase of 1,027 vendors, or 8%, increase compared to FY2020, versus 11,135 unique vendors signed up at the end of FY2019.

Through continued promotion of the contracting efforts, GSS will continue to provide Vendor and Agency trainings, make presentations, and promote the use of best-in-class procurement standards. Further, the contracting team will make vendors and agencies aware of the value of vendor diversification and promote the OSD certification process. The GSS team continues to look to improve email communications, which ensures unified messaging, making the central contract team more efficient and professional.

In FY2021, the central contracting team continued to create additional electronic templates and modify existing templates to promote the contracting and procurement efforts, trainings and education available to vendors and agencies. This will include the creation of pre-recorded webinar or PowerPoint presentations that can be accessed in an on-demand environment.

Through internal tracking of changes made to Agency templates, the Government Support Services team modified various agency use templates CY2021. The changes vary from recommendations made by procurement counsel to changes as identified by the marketplace participants.

The eMarketplace announcement have been and will continue to be, on both state-wide email messaging, individual messaging and small group trainings within agencies from GSS. Additionally, our GSS Trainer has taken on a new methodology for communication including short training videos utilizing Articulate Storyteller 2 software. These short, topic specific training videos help engage agency users at their desk, with in the moment knowledge sharing to increase efficiency and maximize learning opportunities for 'off hour' eMarketplace registered users.

Generate Savings and Create Efficiencies

Post the eMarketplace "Go Live" in FY2015, the online state contract shopping platform now includes 113 unique vendor catalogs, over 3.6+ million individual items listed, and has processed over \$29M in purchases since inception. Shoppers using state contracts can now shop comparing items across awarded competitive contract awards for best price and value in a matter of seconds. Orders can be processed through financial and accountability workflow processes and electronically approved at the supervisory level before purchasing as a single transaction through an ecommerce platform.

The GSS leadership team will continue to promote contract aggregation with agencies and school districts to obtain better value. Contract officers will be encouraged to plan for outside agency utilization of contracts, including state counties and municipalities, which represents 21.8% of aggregated spend for FY2021, a 3% decrease from 24.8% in FY2020. The central contract team ensures agencies outside the state are informed Delaware contracts can be utilized with prior state agency permission and vendor approval.

The contract leadership team shall continue its efforts to let authorized 501(c) (3) and Grant-in-Aid agencies know they have the ability to utilize state contracts. Similarly, the contract officers continue to educate the awarded vendor community of this accessibility to contract usage. This access to centrally awarded contracts has led some entities to seek access to the new eMarketplace solution and leverage the improved shopping experience.

IV. Recommended Statutory Amendments in Support of Contracting Initiatives

29 Del. C. §6913 (d) (2) requires the Council to "...include recommended changes to the State's procurement laws as may be necessary to improve the State's overall effectiveness..." in the annual report. The Council has reviewed existing procurement statutes contained in Chapter 69 of Title 29, Delaware Code and offers the following recommendations for consideration pursuant to this requirement:

I. Freedom of Information Act (Holdover item from 2014 and through the 2020 Report)
Currently, the handling of Freedom of Information requests is dependent on type of procurement as identified under Title 29, Chapter 69.

Under [§ 6923](#), the disclosure of information other than the name(s) of bidder(s), is at the discretion of the procuring agency, including prices, until the responsiveness of each bid has been determined. Bids shall not be available for public inspection before receipt of a fully executed contract.

Under [§ 6924](#), other than the name of each offeror and other relevant information being disclosed at bid opening, all other information contained in the proposals shall be confidential during the negotiation process.

- 1) Disclosure of 1 offeror's price to another and any information derived from competing proposals is prohibited.

Under [§ 6962](#), there are no restrictions on the disclosure of information in Public Works Contracting or Professional Services Contracting. Therefore, it is recommended that [§ 6962](#) be amended to add:

"(e) Disclosure of Information. - The disclosure of information other than the name(s) of bidder(s) is at the discretion of the procuring agency, including prices, until the responsiveness of each bid has been determined. Bids shall not be available for public inspection before receipt of a fully executed contract."

Under [§ 6981](#), there are no restrictions on the disclosure of information in Professional Services. While GSS maintains as a matter of policy, consistent with § 6923 and § 6924, that all information except bidder's names at the time of opening will remain confidential until such time as an awarded vendor shall be selected, other agencies have discretionary power to determine how to handle FOIA requests. It is thereby recommended that [§ 6981](#) be amended to add:

"(j) Disclosure of Information. - The disclosure of information other than the name(s) of bidder(s) is at the discretion of the procuring agency, including prices, until the responsiveness of each bid has been determined. Bids shall not be available for public inspection before receipt of a fully executed contract."

It is recommended that these variances in the code be corrected to eliminate independent interpretations of the FOIA response standard as it relates to bids competed through § 6962 and § 6981.

II. Sole Source Procurement (Holdover item from the 2014 and through the 2020 Report)

Under 29 Del. C. [§ 6925](#), [§ 6965](#) and [§ 6985](#), sole source procurements (SSP) do not contain a requirement for public notice prior to award. Although the code is specific to the requirements associated with a SSP, the interpretation is agency dependent. By example, GSS tends to have a stricter interpretation of what creates a sole source than do agencies.

This discrepancy between how agencies interpret the Delaware Code could have a significant economic cost for the State; if an agency is allowed to loosely interpret the statute. Therefore, to ensure that a SSP is in fact an actual and appropriate sole source situation, GSS recommends that all intended SSP be publicly advertised. The recommendation:

All sole source procurements must be posted on the bid opportunities website at <http://mymarketplace.delaware.gov/> for 14 days before the execution of a contract. The purpose of this posting is to advertise to the vendor community the desire to enter into a sole source contract. Under appropriate circumstances, agencies may obtain an exemption from advertising from the Director.

The sole source public notice shall include a brief but descriptive summary of the good and/or service to be purchased, the identity of the sole source supplier and instructions to interested suppliers to submit alternative procurement options to the sole source determination.

The published sole source notice shall serve as the Agency's notice of intent to award.

The purpose of publicizing the sole source notice is to offer other possible suppliers an opportunity to respond and to provide an opportunity to demonstrate best value to the requesting agency. Should an agency receive no sole source notice counter proposals, the agency could move forward with the execution of an agreement for the SSP waiver. If an alternate vendor should provide a SSP response, the agency would be expected to evaluate the response and make a determination, documented for the procurement file, if the SSP was still appropriate, or if the commodity and/or service to be procured should be competitively bid. Further, this notice of intent to award as sole source is demonstrable documentation of market research required before an Agency head might make a sole source determination. Since sole source procurements are not emergency procurements there should be no negative impact to the acquisition of goods or services from a timing perspective and should increase the transparency of this effort to the public and vendor community. The 2014 NASPO Annual Survey of the States previously revealed that 20 states require this type of publication prior to awarding a sole source contract.

III. (Holdover item from 2014 and through the 2020 Report)

29 Del. C. [§ 6923](#), [§ 6924](#), [§ 6962](#), and [§ 6981](#) contain requirements to advertise solicitations that exceed the [thresholds](#) established by this Council for formal bidding. Each Budget Bill for the last few years has contained an epilog section that

“For the purposes of meeting the public notice and advertising requirements of 29 Del. C. c. 69, the announcement of bid solicitations and associated notices for the required duration on www.bids.delaware.gov shall satisfy the public notice and advertisement.”

It is recommended that similar allowances be codified to allow for the requirements for the public notice and advertising requirement be met by an electronic notification system, to be established and maintained by OMB for all Agencies as defined in 29 *Del. C.* [§6902](#).

IV. Extend Purchases Using Federal Contracts (Holdover item from 2015 and through the 2020 Report)

As noted in the 29 *Del. C.* § 6935 language, the Director of GSS is allowed to approve the use of GSA contracts to procure materiel. It is recommended that this language be modified as highlighted below in blue and allow for the procurement of services.

§ 6935 Purchases using federal contracts.

The Director may enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel [and/or services](#) at prices approved by the General Services Administration of the United States government or its successor.

As previously noted, 29 *Del. C.* § 6987 and § 6988 were modified to allow for the changes requested, but updates to § 6935 were omitted.

V. Create a Technology Procurement Subchapter for the Delaware Code

Delaware procurement Code, Title 29, Chapter 69, has only limited evolution over time. Given the rapidly changing nature of technology and a co-mingling of product and services procurements within singular implementations, the current Code does not appear to adequately capture the possible technology procurement spectrum. Without getting too expansive, the spectrum can be seen in a few examples, such as:

- Layered contractual documents which include state Data and Cloud terms and conditions, as well as vendor End-User License Agreement (EULA), Service Level Agreement (SLA), etc.
- Design and implementation of complex and/or integrated solutions
 - For example, Agile Project Management
- Design, procurement and installation of technology hardware which would trigger Prevailing Wage due to exceeding labor thresholds as well as Craft Training and/or Apprenticeship requirements

Further, the creation of Technology Procurement section of Code could also consider technology procurement thresholds, which do not seem adequately considered in the current procurement tranches of basic goods & services, professional services or Public Works. And, should there be different levels for different requirements such as new procurements versus software license renewals and/or annual fees.

VI. Seek to Limit Negotiation on Select Terms in State Contracts

A growing trend in state government procurement is the enacting of legislation which voids vendor provisions to which the state cannot agree or curtails the level of negotiation allowed prior to the state coming to terms for contract execution. Legal review, engagement and negotiations are more commonplace and can unnecessarily delay the contracting process. By the state of Delaware potentially outlining terms it will not consider negotiating, the state and its procuring agency is transparent with the vendor community about the manner in which it wishes

to conduct business and some of the limitations associated. By example, as an introductory sampling of states, both Georgia and Ohio, have limited terms which are subject to negotiation.

The following terms and conditions are offered as an initial suggested recommendation(s) and how the recommendation applies:

- Arbitration – Binding arbitrations should not be a requirement of the contract.
- Indemnification – Delaware Constitution limits indemnification.
- Disclaimer of Warranties – Agencies shall not warrant licensed technology is free from the rights of third parties.
- Choice of Law – Agreement should always be governed by Delaware law.
- Confidentiality – Claims of confidentiality must consider Delaware's confidentiality statutes.
- Sovereign Immunity – The state generally has rights to sovereign immunity unless waived and agreement should not waive.

By limiting select terms from the procurement negotiation cycle it should reduce the time necessary to reach a contractual agreement. The offered initial suggestions is not intended to be inclusive, but instead the final identification of clauses should be subject to DOJ engagement on behalf of all state agencies.

NOTE:

The report has been generated by summarizing activities, accomplishments, recommendations and awards for the following agencies:

- Government Support Services,
- Department of Health and Social Services,
- Department of Transportation,
- Department of Correction. and
- Department of Services for Children, Youth and their Families.
- School Districts/K-12