

# STATE OF DELAWARE ANNUAL REPORT FROM THE CONTRACTING AND PURCHASING ADVISORY COUNCIL 2023

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.

## OUR MISSION

To advise as to the effectiveness of and make recommendations for changes to the State's procurement laws, policies and practices to the Director of the Office and the Administrator of the Section.

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## A LOOK AT 2023 CONTRACTING AND PROCUREMENT ACTIVITIES

### Professional Development of Contracting Personnel

Monthly Government Support Services (GSS) team meetings have been added back to the schedule in CY 2023. The meetings are designed to cover best practice updates, discuss current activities, and provide topic specific training. Trainings have included topics such as responding to protests, user group engagements, and project timeline considerations.

A monthly meeting with State Contract Procurement Officers has been adopted in CY2023, focusing on user group development. The meeting highlights contracts that have hit the active list, requiring rebid or extension negotiation. Contract spend and prior user group composition is evaluated, and recommendations made to ensure user group is representative of contract utilization and useful.

### National Partnerships

Each of the GSS team members belong to the National Institute of Government Procurement (NIGP), National Association of State Procurement Officials (NASPO), NIGP The Institute for Public Procurement, 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.

The GSS Director serves on the NASPO Professional Development Committee and the Annual Conference Planning Committee. In 2021, the [International Association for Continuing Education and Training \(IACET\)](#) awarded the [National Association of State Procurement Officials \(NASPO\)](#) the prestigious Accredited Provider accreditation. IACET Accredited Providers have sufficiently demonstrated their program credentials and are 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.) Additionally, NASPO Procurement U classes are available (many at no cost) to interested public procurement professionals.

Further, several of the GSS team belong to the National Procurement Institute (NPI), which provides access to other procurement education resources and retains access to an outside organization evaluated comparative procurement review; the Achievement of Excellence in Procurement.

The GSS Deputy Director retains his membership in the Society for Human Resource Management (SHRM).

Personnel from several agencies belong to the Delaware Public Procurement Association (DPPA). Agencies represented within the [DPPA](#) organization include, Department of Safety

and Homeland Security (DSHS), Department of Correction (DOC) and the New Castle County government.

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

1 – Certified Public Procurement Officer (CPPO)

A member of GSS team participates in national cooperative contracting efforts, contributing 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.

In February 2023, one (1) Delaware team member participated in the NASPO State Training Conference held in San Antonio, TX. This conference geared toward those who coordinate state procurement training efforts to peer-to-peer solutions, learn the latest in instructional methodologies, and exchange training resources.

In April 2023, two (2) Delaware team members, including one (1) from DTI participated in the NASPO Exchange held in Salt Lake City, UT. This conference provides for educational opportunities as well as provides attending vendors the opportunity to engage and discuss business and future opportunities directly with primary state agents. This also allows the state to promote opportunities and identify procedures for doing business with the state and its agencies.

In July 2023, six (6) Delaware team members participated in the NASPO Regional Education and Connection Hub (REACH) Conference held in Cleveland, OH. 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.

In September 2023 GSS leadership (Director and Deputy) participated in the 2023 NASPO Annual Conference, in Atlanta, GA. The GSS Director also served as member of the Annual Conference Planning Committee.

The NASPO sponsored Law Institute scheduled in November 2023 was attended by the GSS Director and two Deputy Attorney General. The Law Conference focuses on legal concepts and improving connections and communication in state government procurement.

The National Procurement Institute awarded GSS the 2023 Achievement of Excellence in Procurement Award. This is the eight consecutive year GSS has received this acknowledgement. In October 2023 three (3) Delaware team members participated in the NPI Conference which offered educational opportunities and recognized all award recipients. GSS has plans to submit a nomination for a 2024 recognition.

### **State Training**

The GSS training program is 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 underwent a major refresh. The new training program relaunched in July 2023 with adjustments

to the content, flow, and format taken into consideration based on end of session feedback. The training for 2023 consisted of:

- Agency Training: Procurement Basics
- Agency Training: Formal Procurements was broken into three parts
  - User Groups, Resources, Outreach
  - Active Bid through Award
  - Contract Management
  
- Vendor Training: Understanding How the State Does Business & Business Intelligence
- Vendor Training: Responding to a Formal Solicitation & Contract Management

As demonstrated in the numbers below, GSS procurement training is a service in high demand. Given the fluid nature of the relaunch, the training program in 2023 was managed as an additional responsibility for a GSS State Contract Procurement Supervisor and a Management Analyst II in their unit, with direction and support from the State Contract Procurement Administrator. While this is a significant time demand on staff, the training program educates the state buyers and our vendor community, 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.

### **Agency Education and Consultation**

Agency training for 2023 were initially conducted in-person before moving to a virtual format to finish out 2023. The current courses are:

- **Procurement Basics** covers the basics of Delaware procurement regulations and practices. Participants learned how to navigate MyMarketplace, identify central contracts, apply Delaware Code in all procurements, the Small Purchase Thresholds and Procedures for those purchases not available through the central contracts, and what to consider from a supplier diversity standpoint. During 2023 GSS presented six (6) classes with 207 attendees.
- **Formal Procurements – Part 1** focuses on the key players in the solicitation process and their roles/responsibilities, the types of solicitations, timelines and third-party reviews, online resources and outreach. During 2023 GSS presented five (5) classes with 123 attendees.
- **Formal Procurements – Part 2** focuses on an active solicitation; activities during a live bid, bid opening, initial review, evaluation, negotiations, and award. During 2023 GSS presented five (5) classes with 79 attendees.
- A new course was launched for agencies as part of the training program overhaul. The **Contract Management** course focuses on everything after the award; protests, contract file, extensions, performance issues, price adjustments, MyMarketplace updates, etc. During 2023 GSS presented five (5) classes with 78 attendees.

In addition to our formal training program, the central contracting team provides educational assistance or consultation to any agency that has questions regarding contracting policy or procedures. In FY2023, GSS responded to over 139 agency help tickets; 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.

## Vendor and Constituent Education

Vendor Day also saw a refresh in 2023 with sessions conducted initially in-person before switching to virtual format. The GSS vendor focused courses are:

- **Understanding How the State Does Business & Business Intelligence** provides vendors with an understanding of why the State procures the way it does; the role of GSS, Central Contracts and the Purchasing Advisory Council; the purchase thresholds and procedures; Supplier Diversity program; Open Data and other business intelligence. During 2023 GSS presented five (5) classes with 54 attendees.
- **Responding to a Formal Solicitation & Contract Management** focuses on identifying key elements in the solicitation the vendor should pay attention to, what happens after the bid opening, and what to expect when offered an award. During 2023 GSS presented five (5) classes with 24 attendees.

Despite increased participation GSS has found that the attendance for vendor training, GSS hosted and GSS participated, was lower than anticipated. A survey of awarded vendors found 70+% were not aware of the training program. A postcard advertisement was mailed late December to announce the 2024 training program, with registration available through EventBrite.

Partnership with Office of Supplier Diversity (OSD) is sought for each Vendor Day presentation. The educational training provides information on how to access resources online, including [www.mymarketplace.delaware.gov](http://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. In addition to partnership with OSD, Small Business Administration expressed interest in participating in our training, attending three of our Vendor sessions to speak to the business opportunities available at the Federal level.

Vendor centric online resources include, but not limited to: information on how to use Open Data datasets, contract usage details, procurement thresholds, FAQs, procedures, and flowchart. Many of the online resources were refreshed in 2023 with a few outstanding scheduled for 2024.

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. For example, 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.

In addition to hosting vendor centric training sessions, GSS Contracting has also participated in a number of other vendor training opportunities, including:

- Apex Accelerators invited GSS Contracting to participate in their May 2023 hybrid vendor training session.

- GSS Contracting developed and held training sessions for the Black Chamber of Commerce and Delaware Laborers Local 199.
- GSS was invited to participate as a Government Contracting and Procurement panelist for Path to Prosperity hosted by SBA, FDIC and USDA in Bridgeville.

To aid in the public transparency efforts, upon contract award, GSS provides a structured Award Notice which includes vendor information, pricing, ordering, contract utilization and contract specific terms. In 2023, GSS changed the online posting submission requirements, streamlining the submission by requiring one document that provides the minimum required information for data entry purposes while also serving as the public notice document. This change has Agencies submitting an Award Notice very similar to the one that GSS uses, with pricing details encouraged, standardizing and providing a consistent format in which information is displayed on the website to improve the overall procurement processes of the State and to promote economic transparency and opportunities.

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.

Similar to agency assistance, the central contracting team provides educational assistance to the vendor community through help tickets which can be submitted through the website. In FY2023, GSS responded to 76 vendor help tickets. This vendor assistance number is in addition to the hundreds of individual questions that are directed at GSS on an annual basis.

The GSS Director serves on the Governor’s Supplier Diversity Council (SDC). In this SDC setting there is the opportunity to listen and engage with diverse business owners and their perceptions of doing business with or competing for business. Further, all GSS contracting personnel are encouraged to make themselves accessible to partners that seek to work with the State.

## CONTRACTING BY THE NUMBERS AND EFFICIENCY OF OPERATIONS

	As of December 31, 2023	
	# of Contracts	FY2023 Spend
Contracts	1,094	
Agency Contracts	863	
Central Contracts	231	\$328,807,861
# of Cooperative Contracts *	41	\$83,125,359
# of Delegated Contracts *	9	
# of Set-Aside Contracts *	4	\$6,777,658
School Spend on Central Contracts		\$66,026,772

\*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.

	<b>Active During FY2023</b>	<b>% of Contracts</b>
Total # of Contracts Active During FY2023	1,781	
# of Agency Contracts Active During FY2023	1,453	82%
# of Central Contracts Active During FY2023	328	18%

For FY2023, GSS received and/or reviewed 68 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 \$9,656.85.

GSS also operates the Copier Resource Management Program. For CY2023, this program saved \$115,235 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 \$12.3M in savings. Further, a new copier/multi-function contract which will take effect February 14, 2024, shows an overall savings of 28% on B&W lease options and 25% on color lease options, while continuing to include toner and no click charges.

In FY2023 the State of Delaware spent \$759.6M 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 and Delaware State Housing Authority (DSHA) spend.

	<b>FY2023</b>
Direct spend with OSD Certified firms (includes DSHA) + W9	\$335,815,263
Indirect spend. Tier II	\$21,243,283
Total Supplier Diversity spend (include W9, OSD & Tier II)	\$357,058,546
Direct Small Business spend with W9 + SBF Certified firms	\$402,564,523
TOTAL (all diverse & small)	\$759,623,069

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.

### **SUMMARY OF RESULTS**

Through the end of FY2023, the My Marketplace (MMP) team received and posted 556 solicitations, which represents a 7% decrease from the 597 FY2022 solicitations received from various agencies. However, reviewing all other active bid posts, which include addenda and any other documents posted to active bids, the MMP team posted 1,092 aggregate items, up 16% from the 939 aggregate items posted in FY2022.



As of the end of FY2023, there were 1,127 awarded contracts posted to the MMP site. This represents a 15% increase from the 982 FY2022 awarded contracts posted. And in FY2021 there were 874 awarded contracts posted to MMP.

Vendor Outreach communication performed in FY2023, by the Central Contracting team of Government Support Services (GSS), totaled 68,769 notices sent to individual firms and represents an 12% increase from FY2022. 914 Outreach notifications were sent directly to Delaware businesses, a decrease of 9% over the previous year period.

As of the end of FY2023, there were 14,907 vendors signed up to receive notification from the State of Delaware's Bid Notification system. This represents an increase of 980 or a 7% increase compared to 13,927 unique vendors signed up at the end of FY2022.

Through the end of FY2023, spend with GSS central contracts decreased approximately 1% to \$328,806,575, which compares with \$333,455,467 in FY2022. Of the reported FY2023 central contract spend, approximately 20% was spent by school districts at \$66,026,772.

For FY2023, GSS realized savings of \$9,657 for agencies through the I Found It Cheaper review process; a decrease of 77% from savings of \$42,030 for agencies in FY2022.

In FY2023, the State of Delaware spent \$759.6Million with the Supplier Diversity and Small Business communities. This is an increase of 5.4% over FY2022.

## **PROCESS IMPROVEMENTS**

GSS provides recommended boilerplate solicitation documents through the GSS MMP website. These boilerplates are routinely evaluated and updated based on changes in Code, regulation and/or policy to ensure stated terms are protecting best interests of the State. Agencies are made aware of updates to the best practice boilerplates through ListServe email blast.

The Purchasing Advisory Council met twice in 2023. The first meeting adopted the bid thresholds passed through Legislation and adjusted the 3-quote range accordingly. The second meeting opened the conversation around adding a 3-quote requirement for professional services contracts but did not immediately implement any requirements.

Through the launch of a standard award notice, in addition to the consistency of information for the vendors, the document workload has decreased on the agency side. A contract award which previously required a minimum of three documents be processed and presented on-line now requires only one.

Understanding that State employees may be aware of only a small piece of the procurement life cycle, a contract update document was developed that allows agency buyers to understand what contracts are currently being worked by the GSS team and what step in the process the contract is in. This monthly update is also used to provide MMP notices, reminders, or training tips and has been well received by the agencies.

With twelve (12) technology contracts transferred from GSS Contracting to DTI Procurement, as part of Senate Bill 153 amending Delaware Code Chapter 90C, Title 29, GSS continues to provide ongoing guidance and best practice templates while they define their processes.

Although some agencies operate independent contracting teams (i.e. DeIDOT, 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, which have been vetted by OMB counsel, 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 CY2023, the eMarketplace contained 8 vendor catalogs processing over 23,845 orders for a FY2023 total of \$7.94 Million in purchases.

## **RECOGNITION**

In CY2023, two (2) 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. With the continued interest by other organizations to make use of GSS contracts, this business opportunity for our awarded vendors has become part of standard vendor communication. This brings the number of non-Delaware public entities that have been given authority to procure from GSS, State of Delaware awarded contracts since 2011 to 44.

Government Support Services has been awarded the Annual Achievement of Excellence in Procurement for 2023 from the National Procurement Institute (NPI). This is the eighth 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.

## **A LOOK AHEAD**

### **Best Practice Recommendations**

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 Improvements**

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, <sup>1</sup>
- 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.

Towards this recommendation to improve and/or correct Delaware Code language, the GSS team is drafting proposed Code changes for consideration in an upcoming Legislative session.

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

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<sup>1</sup> 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)).*"

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 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.

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](#)

### **Training and Education**

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 CY2023, GSS procurement staff completed 118 unique training events.

For 2023, 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 continues to conduct and promote the Vendor and Formal Procurement presentations and continues 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 encourage vendors to register through Blackboard for bid notifications. At the end of FY2023, the MMP team had 14,907 vendors signed up to receive notifications regarding new active solicitations. This represents an increase of 980 vendors, or 7% increase compared to FY2022. New for 2023 GSS has announced a new subscription option that will allow vendors to receive announcements regarding blog updates, resource updates, training announcements, etc.

## Generate Savings and Create Efficiencies

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 28.2% of aggregated spend for FY2023, a 3% increase from 24.7% in FY2022. 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.

## 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:

### Freedom of Information Act (Holdover item since 2014)

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.

#### **Sole Source Procurement** (Holdover item since 2014)

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.

**Bids.Delaware.Gov** (Holdover item since 2014)

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 reads:

*“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](http://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.

**Extend Purchases Using Federal Contracts** (Holdover item since 2015)

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.

**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.

### **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