



FREQUENTLY ASKED QUESTIONS

Executive Order 01.01.2021.01

Increasing Small Business Participation in State Procurement

Summary

The Hogan-Rutherford Administration's first Executive Order of 2021 was issued on January 6, 2021. Executive Order 10.01.2021.01 engages the state contracting marketplace to support the small business community during a critical economic recovery period from the COVID-19 pandemic. It enhances the Small Business Reserve (SBR) Program by **designating all procurements between \$50,000 and \$500,000 to the SBR Program**, unless the procurement meets defined exemptions.

What is the effective date?

- February 1, 2021. Solicitations posted prior to that date do not need to be amended.

Who is subject to the Executive Order (EO)?

- Any agency/institution/department that has an SBR Liaison and is reporting their performance of the Small Business Reserve (SBR) Program to the Governor's Office of Small, Minority & Women Business Affairs (GOSBA).

What if an agency already submitted their Procurement Review Group (PRG) documentation to DGS Office of State Procurement (OSP) for review/approval and the agency has not released the solicitation yet, does the new SBR EO apply to new and any unreleased procurements?

- Yes, if the solicitation has not been posted prior to February 1, 2021, then the SBR EO would apply. The good news is the SBR PRG does not have to be completely "redone", since the agency should have completed the SBR Designation Worksheet showing their research on small businesses. The agency would only need to add the first four pages of the PRG Evaluation - SBR Program Designation Worksheet to note whether the procurement is designated as an SBR, exempt or requesting a waiver. *[Note: The agency should ensure adequate research for small businesses was conducted originally.]*

Otherwise, the agency may want to perform additional research with the new PRG Evaluation - SBR Program Designation Worksheet.]

Is the 15% set-aside still in place?

- Yes. Agencies/institutions/departments are expected to designate at least 15% of their total fiscal year procurement expenditures for certified small businesses through the SBR Program.

How does the Executive Order differ from SBR protocols currently in place during the PRG process?

- The Executive Order establishes that all procurements between \$50,000 and \$500,000 are automatically designated as SBR Program procurements, unless the procurement is exempt or a waiver is requested based upon the PRG. Previously, there was no formal approval process through GOSBA regarding the determination of an SBR Program designation, or a process for making a determination for a waiver. Both now apply to solicitations between \$50,000 and \$500,000 that are not designated to the SBR Program. Agencies/institutions/departments should have always conducted a PRG for determining SBR designation on any small procurements. Procurements over \$50,000 were not automatically designated as SBR Program procurements; however, a PRG for determining SBR Program designation was required as established by the control agencies through policies, procedures and best practices.

If my purchasing unit does not submit its PRG through the DGS Office of State Procurement (OSP), does this Executive Order still apply?

- Yes. As previously stated, all agencies/institutions/departments with an SBR Liaison are expected to comply with the Executive Order. Control agencies or units with delegated authority should develop best practices for implementing the Executive Order within their operation and provide that guidance to their procurement team.

Are there any exemptions to this Executive Order?

- Yes. Not every purchase is suited for the SBR Program. The exemptions are outlined in the BEST PRACTICES: *Small Business Reserve (SBR) Executive Order 01.01.2021.01 Implementation Guidelines* under the Exemptions section.
 - To view this document, visit <https://procurement.maryland.gov/procurement-review-group-prg/>

If an exemption is determined, how do we obtain a waiver for procurements between the Executive Orders threshold?

- The process for obtaining approval for an exemption is outlined in the PROCUREMENT REVIEW GROUP: *Guidance & Worksheets* issued by OSP and GOSBA. In most cases, GOSBA is simply notified of the waiver. If the exemption does not fall within prescribed guidelines, GOSBA must review and approve the waiver before the solicitation can be posted. Your determination for a waiver request must be compelling for GOSBA to grant the waiver; otherwise, it could be denied and the SBR Program designation would apply to the procurement.

What is the turn-around time for a waiver that must be evaluated by GOSBA before the solicitation can be posted?

- 72 hours maximum. GOSBA is hoping to turn them around sooner.

Does GOSBA want to see all SBR Program Designation Worksheets or just the worksheets with waiver requests?

- No, the PRGs that result in the automatic SBR designation do not have to be submitted to GOSBA.
- Only the PRGs that result in the procurement being exempt or are requesting a waiver must be submitted to GOSBA.
- IF during the procurement process an amendment was made to remove the SBR designation, the PRG for the SBR designated procurement would have to be updated and submitted to GOSBA.
- The main point here is that even though the SBR EO automatically designates procurements from \$50K to \$500K as SBR procurements, the PRG for SBR (and MBE and VSBE PRGs, if applicable) must be completed and signed by the PRG members.
- The instructions are outlined in the PROCUREMENT REVIEW GROUP: *Guidance & Worksheets* document.
 - To view this document, visit <https://procurement.maryland.gov/procurement-review-group-prg/>

What action should be taken if the Procurement Officer determines there is insufficient interest/response to the solicitation from certified small businesses?

- The solicitation may be amended and the SBR Program designation may be removed. The steps are outlined in the BEST PRACTICES: *Small Business Reserve (SBR) Executive Order 01.01.2021.01 Implementation Guidelines* document.
 - To view this document, visit <https://procurement.maryland.gov/procurement-review-group-prg/>

What is the best time to amend an active solicitation?

- The Procurement Officer shall make that determination based on their continued monitoring and interaction with potential bidders/offerors. A justification for the amendment is required when notifying GOSBA that the solicitation has been amended. The instructions are outlined in the PROCUREMENT REVIEW GROUP: *Guidance & Worksheets* document.
 - To view this document, visit <https://procurement.maryland.gov/procurement-review-group-prg/>

Is there a dollar amount that would be considered too high for designation to the SBR Program?

- No.

Can MBE or VSBE participation goals still be applied?

- Absolutely. The procurement process does not change and the evaluation for MBE and VSBE participation is expected to continue as currently conducted through the PRG process.

If the contract value is above \$500,000, is a waiver required if the solicitation is not designated to the SBR Program?

- No. However, the PRG process for making the determination for not having an SBR Program procurement would still be conducted as required.

Are solicitations below \$50,000 exempt from the Executive Order?

- Yes, however, it is a standard best practice that all contracts no matter what the estimated dollar values could be should be considered for SBR Program designation or direct solicitation to certified small businesses in the SBR Program.