



Policies and Procedures



Individual Agency Requests for Intergovernmental Cooperative Purchasing Agreements (ICPAs) - “Procuring” or “Piggybacking”

BACKGROUND

Per **COMAR 21.05.09.02**, as a Primary Procurement Unit, the DGS Office of State Procurement (OSP) may initially sponsor or participate in, renew, modify, or administer an Intergovernmental Cooperative Purchasing Agreement (ICPA) on its own behalf or behalf of another agency when a determination is made under **SFP §13-110** and **COMAR 21.05.09.04**.

POLICY

Any State procurement entity/agency/unit seeking to participate in or utilize an ICPA must obtain prior written approval from DGS OSP as the sponsor of the ICPA on behalf of the agency/unit. Also, prior to awarding the ICPA contract, the procurement agency/unit must receive approval of the award recommendation from DGS OSP and the Board of Public Works (BPW), as required by delegation thresholds. The DGS OSP approvals for utilizing and awarding the ICPA are received simultaneously when the ICPA is based on piggybacking and no secondary competition is required.

DEFINITIONS

- A. **Lead Agency** - The State entity or other governmental entity that is serving as the “procurement officer” for the cooperative, consortium, association, or organization and has the responsibility of administering the resulting contract for the ICPA.
- B. **Named Participant** - The State of Maryland through the State entity is part of the cooperative, consortium, association, or organization that is conducting a procurement for all members to utilize the resulting contract.
- C. **Piggybacking** - A State entity may wish to utilize a contract by another governmental entity due to the favorable terms of that contract. This is known as *piggybacking*, where the governmental entity will be extending the pricing and terms of a contract entered into by another governmental entity. For a Maryland State entity to piggyback on a contract, that contract must have been competitively awarded.
- D. **Sponsor** - The Primary Procurement Unit, namely DGS OSP, who participates on behalf of another State entity in an ICPA.
- E. **State Entity** - A department, board, commission, agency, or a subunit in the Executive branch of State government. For purposes of this policy the term “agency” is used to refer to all State entities.
- F. **Using Agency** - A State entity that received approval by the Sponsor to participate in an ICPA.

PROCEDURES FOR PARTICIPATING IN AN ICPA

- A. **Pre-Participation.** When requesting DGS OSP to act as a sponsor for an agency, a Procurement Officer’s Determination (POD) must be submitted to DGS.OSP-Requisitions@maryland.gov and approved by DGS OSP before proceeding. Requirements for the POD and supporting POD documents are outlined below.

1. Procurement Officer's Determination (POD) recommending usage of an ICPA procurement signed by the Procurement Officer and the Agency Head or designee and satisfying the requirements of **COMAR 21.05.09.04**.
 - a. The POD shall be in writing and include:
 - (1) Sufficient evidence that the ICPA will:
 - (a) provide cost benefits to the State; or
 - (b) promote administrative efficiencies, or promote intergovernmental cooperation; and
 - (2) A statement how the ICPA is:
 - (a) in the best interest of the State; and
 - (b) not intended as a means to evade the purposes set forth under **COMAR 21.01.01.03**.
 - b. The contents of the POD will be dependent on when the agency is seeking participation before posting a competitive solicitation (*procuring*) or after award (*piggybacking*), i. e. cost benefits may be based on economies of scale for cooperatives, consortiums or associations based upon the number of participants (other states, organizations, commissions, etc.) for competitively procuring or actual pricing and cost analysis for piggybacking.
2. DGS OSP PRG review and recommendation, if required. Whether the agency is procuring or piggybacking to obtain a contract through an ICPA, the agency should consider: (1) if the contract can be designated as a Small Business Reserve (SBR); and (2) if there are subcontracting opportunities for Maryland Minority Business Enterprises (MBEs) and/or Veteran-owned Small Business Enterprises (VSBES).
3. Market research to support the POD that use of ICPA is in the best interest of the State.

NOTE: *DGS OSP will review the submission in accordance with the Statewide ICPA Policy and either approve the sponsorship or request additional information/supporting documentation in order for DGS OSP to complete its determination. Allow a minimum of three weeks for DGS OSP to conduct its review and determination. Once DGS OSP has made its determination to approve the request to sponsor the agency, the DGS OSP PO, the CPO or designee, and DGS Secretary will sign the DGS OSP ICPA POD and return a copy to the "Using Agency".*

- B. Participation.** The Using Agency should follow Maryland Procurement Manual best practices, policies and procedures for procuring for the ICPA participation.
1. The Using Agency must ensure the contract documents include the Maryland Participation Agreement with Maryland Mandatory Terms and Conditions and any other required forms and affidavits, which can be found on the [DGS OSP website](#).
 2. If the Using Agency is a Named Participant in the procurement that is expected to exceed \$50,000, the Using Agency will post a public notice of the solicitation through eMaryland Marketplace Advantage (eMMA), pursuant to [COMAR 21.05.09.07](#).
 3. If the Using Agency is piggybacking on an existing entity's contract, the Using Agency will work with the contractor to obtain a signed contract with the contents required in B.1 above to submit to DGS OSP for an award recommendation.

4. The Using Agency must abide by the requirements within the Participation Agreement, e.g. sending public solicitation notices to the cooperative, consortium, association, or organization when a Named Participant, or obtaining approval to participate from the Department of Information Technology Agency Head for the NASPO Cloud Solutions contract.

C. **Pre-Award.** When ready to make the award recommendation, the Using Agency must submit the following to DGS.OSP-Requisitions@maryland.gov for review and approval:

1. Statement of Economic Benefit to Maryland;
2. Comptroller’s Control Number for the Maryland Tax Clearance ID;
3. Copy of the following documentation from the Lead Agency:
 - a. Original Solicitation and any Addenda, including Participation Agreement with Maryland Mandatory Terms and Conditions included and Maryland Mandatory Affidavits;
 - b. MBE and VSBE Recommendations;
 - c. Price Evaluation/Bid Tabulation (*if available*);
 - d. Award Letter or Contract; and
 - e. MBE and VSBE Vendors.
4. For *piggybacking*, evidence of competition in the awarding of the ICPA, such as the price evaluation/bid tabulation, POD from ICPA discussing competition, or fair market analysis that it is in the best interest of the State if there is no evidence of competition.
5. Signed Participation Agreement (PA) with Maryland Mandatory Terms & Conditions included and Maryland Mandatory Affidavits, as discussed in B.1 above.

D. **Award.** ICPA contract awards require public notice on eMMA and BPW approval at the same thresholds as other procurements.

1. Confirm the ICPA POD is approved and signed by DGS OSP and published on the DGS OSP website prior to the DGS OSP BPW Action Agenda publication, when applicable, or execution of the contract.
2. Confirm and receive all approvals from DGS OSP and BPW, when applicable.
3. Execute and date contract agreement and complete award procedures per your internal agency’s policy.
4. Notices of award of all contracts shall be published in eMMA by the Procurement Officer not more than 30 days after the execution and approval of the contract per [COMAR 21.05.02.16](#).

Version Number	Date	Reason for Change
2	August 4, 2023	Clarifications and Updates based on Statute