Maryland
DEPARTMENT OF GENERAL SERVICES

OFFICE OF STATE PROCUREMENT
EST. 2019

eMMA Posting Entities WORKGROUP

Procurement Improvement Council

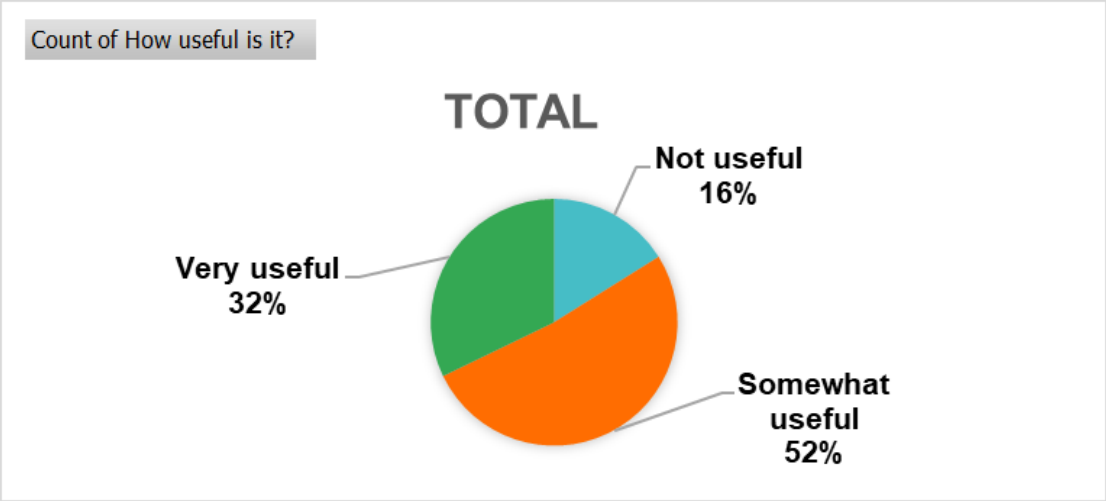
December 12, 2023

eMMA Survey Results

Two versions of the survey were distributed to all eMMA government entity users, including State, county, local schools, and universities.

87 unique responses were received from the survey with 84% saying eMMA was a useful tool for:

- Advertising solicitations,
- Conducting procurements, or
- Posting contract awards.

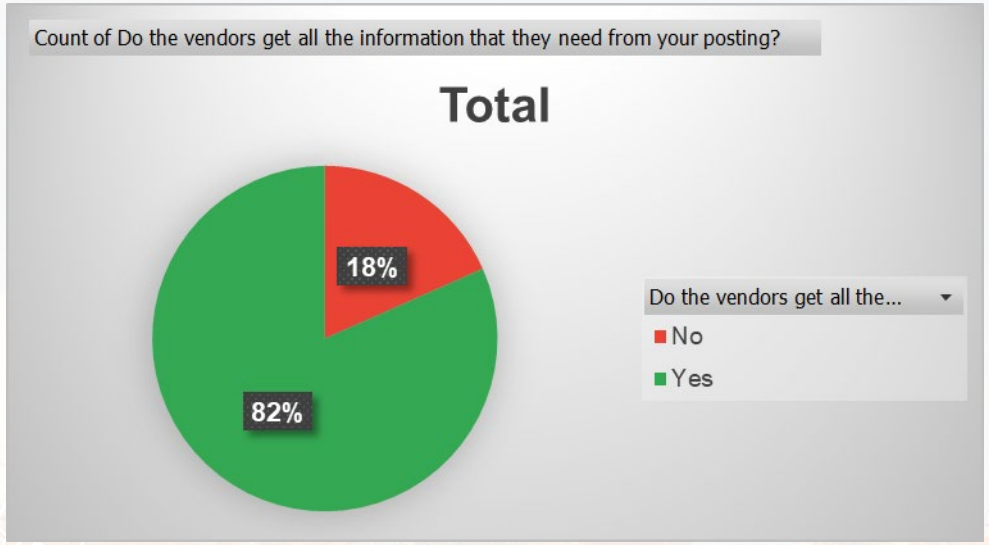


Why I like eMMA?

"The ability to publish solicitations" and *"find a larger pool of potential bidders"*

- Central repository of information; 24/7 access, common process.
- Having information accessible in one location (i.e. vendors, contracts, solicitations).
- Being able to find documents used in prior solicitations.
- Customer service is very responsive.
- The platform makes it easy to research vendors and obtain competition on RFPs.
- I like that the State has moved toward digital submissions so that vendors don't have to submit paper proposals.
- Brings in lots of competition.
- Single location for posting bids
- eMMa has definitely made procuring more streamlined.

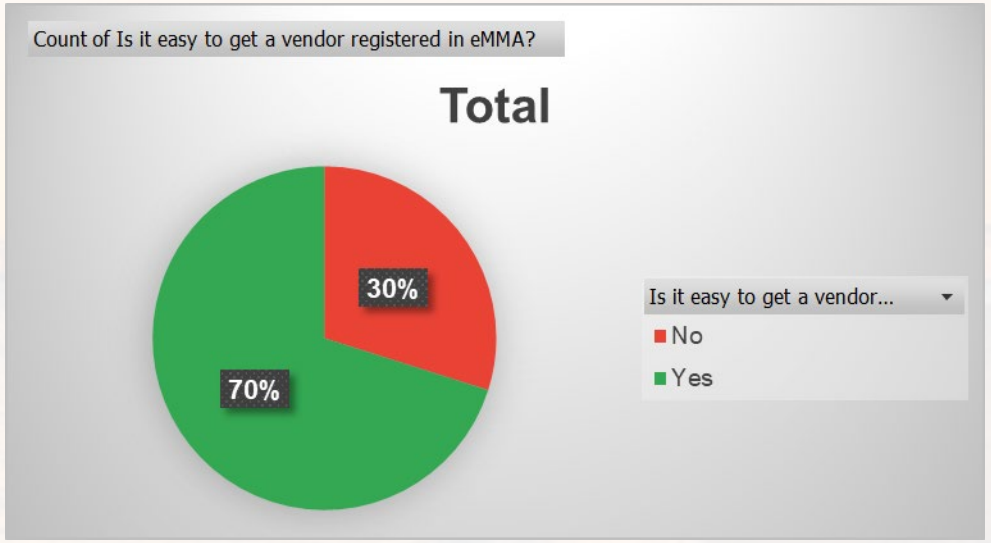
eMMA provides a streamlined process to notify Vendors of contracting opportunities!



Challenges are Vendors are not setting up their profiles with the appropriate commodity codes to receive the notifications that apply to them.

Opportunities to provide communication to all users – internal and external – to understand not only “how to use eMMA” for specific steps, but “why use eMMA” for proper approvals in the workflow, security, and transparency in the procurement process.

Easy to get Vendors Registered!



Challenges are that Users do not have adequate training on eMMA or use it infrequently, so the process is not retained.

- System is not user friendly
- Vendors found are not what we're looking for
- Large number of vendors solicited with little response

Opportunities are to provide refresher training for procurement users in a manner that is helpful to them, communicating the different training platforms available:

- FAQs
- Quick Reference Guides (QRGs)
- Video training
- Instructor led training

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MINORITY BUSINESS ENTERPRISE (MBE) WORKGROUP

Procurement Improvement Council

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PROCESS IMPROVEMENT

Streamlining procurement processes and workflows to enhance efficiency and boost effectiveness.

VALUE STREAM MAPPING

Utilizing a consultant and undertaking a comprehensive value stream mapping initiative for MBE goalsetting (part of the Procurement Review Group (PRG) process); compliance, and non-payment processes and procedures.

- Updating existing workflows
- Develop and implement improved business processes
- Streamline operations and timelines

SMALL PROCUREMENT TRANSPARENCY

With Small Procurement thresholds elevating, we need to increase economic opportunity and transparency to foster supplier diversity and empower MBE's.

Small Procurement Threshold Increases to $100K

The Small Procurement Threshold increased from $50K to $100K ($200K for construction)

Solicitation Posting Period

Expanding the time period for which a small procurement is publicly posted:

Category II

Ranging in value from $5K to $15K, will now be posted for at least 7 days

Category III

Ranging in value from $15K to $100K, will now be posted for at least 14 days

OUTREACH & PARTNERSHIP TO ACHIEVE MBE GOALS

Reimagining procurement goal setting and developing partnerships to drive positive social impact and create a more inclusive and equitable marketplace.

Procurement Review Group (PRG)

- Now requiring more advanced market research prior to contract solicitation to improve MBE participation
- Piloting a Request for Information (RFI) process to encourage vendor feedback regarding MBE participation, as well as improve quality of solicitations
- Implementing escalation points for approval of procurements with “0” recommended MBE goals

Partnering and Collaboration

- Collaboration with NAACP of Maryland, chambers of commerce, and Historically Black Colleges & Universities (HBCU) to increase outreach to underserved areas and increase MBE compliance

MARYLAND PROCUREMENT ACADEMY

Procurement Improvement Council

MDPA: BY THE NUMBERS

A huge thank you to our vendor community, participating State staff, and our many support resources.

10,500+

Total attendance year-to-date for virtual instructor-led training modules, webinars, and sessions, combining vendor participation of 7,914, and state participation of 2,597.

24,500+

Total article views via the Freshdesk Maryland Procurement Knowledge Portal, including quick reference guides, instructional resources, and user guides.

285

New certifications earned amongst Maryland staff, combining successful participants in the Certified Maryland Procurement Officer (CMPO), Procurement Associate (CMPA), and Green Purchasing Specialist (GPS) programs.

DEVELOPMENT & DESIGN

Growing our curriculum to promote the advancement of Maryland procurement.

IT Procurement Specialization Certification Program

A certification program to best prepare Maryland Procurement Officers and Procurement Managers with the tools, resources, and knowledge necessary to navigate the complexities and understand the full integration of IT procurement.

Contract Management Certification Program

A foundational certification program designed for State staff to support the fundamental building blocks of effective contract management, including increased productivity, risk aversion, improved efficiency, and reduced cycle times.

Acquisition Planning

A training series for State procurement staff providing a comprehensive analysis of acquisition planning and its critical role in public procurement, as well as best strategies and practices to better streamline the procurement process.

Business Clearance and Legal Review

A training series in collaboration with the Office of the Attorney General to assist and support State procurement staff with the legal review process within State procurement, including business clearance procedures and risk mitigation.

Maryland Procurement 101

A self-paced, interactive training program for all audiences seeking to learn and understand the principles of State procurement. After initial piloting in late 2023 for State staff, a customized version is now available for vendors and businesses.

CONTINUOUS SUPPORT

In addition to certification programs, the MDPA strives to support all audiences through multiple creative formats.

Web Channels

On-demand video resources and content for all things procurement, training, and support.

Flash Sessions

Snack-sized training modules that pack a helpful punch of tips, information, and process.

eLearning

Self-paced, interactive training modules for all audiences, focused on covering the fundamentals.

Guides & Aides

Ongoing updates and additional content in the form of reference guides, aides, and info documents.

Monthly Training

A growing list of monthly webinar training courses for all audiences.

eMMA Support

emma

Training courses, resources, and working sessions to help navigate Maryland's eProcurement platform.

CONTACT & COMMUNICATION

Supporting Maryland procurement.

- Visit us online: procurement.maryland.gov/training
- Get in touch: dgs.osp-mdpa@maryland.gov
- Bookmark us for monthly training schedules
- We appreciate your ongoing engagement and support

eMMA IMPLEMENTATION
· BY THE NUMBERS

340K

Vendor Engagement

- Over 341,000 supplier records
- Including 8,000+ MBEs, 3900+ SBRs, and 650+ VSBEs
- Supporting fully electronic SBR/VSBE certification process
- 60% increase in potential MBE participation
- Full integration with RSTARS

10K

Contract Management

- Housing more than 10,000 contract records
- 5,024 Active Contracts with value ~$1.77B
- Ensuring compliance with COMAR and OSP policies
- Automated workflows, system alerts, and programmed business rules

50K

User Base

- More than 50k vendor users across various supplier industries
- Over 3,000 state, local, municipality, school system, and higher education organization users

$243.4M

Transactional Functionality

- Over $243.4M paid to vendors through downstream transactions since December 2022
- 3,100+ purchase orders
- 7,498 invoices completed
- Validating proper three-way match (PO, receipt, invoice)

As Of December 7, 2023

Approved for Publication
BPW 12/13/2023, Secretary's Item 5

Model Policy on Liquidated Damages

I. Authority & Application.

This Policy is adopted by [name of unit] pursuant to the requirement of §15-113(c) of the State Finance and Procurement Article, Annotated Code of Maryland to adopt a written policy concerning the inclusion and use of liquidated damages provisions in procurement contracts by [name of unit].

[If unit has procurement control authority, also include: [Other state units performing procurements subject to the control authority of [name of unit] under [cite to control authority in COMAR and/or STATUTE] shall apply this liquidated damages policy to such procurements.]]

II. When to include Liquidated Damages Provisions in Procurement Contracts.

A. When Required by Law

The following types of contracts are required by law to include liquidated damages provisions:

.01 All Contracts with Certified Minority Business Enterprise Goals (COMAR 21.07.01.14A, 21.07.02.08A, and 21.11.03.10E)

.02 All construction contracts unless the agency head determines that the exclusion of the clause is in the best interest of the State. (COMAR 21.07.02.08B)

.03 All Contracts subject to a prevailing wage requirement (COMAR 21.11.11.02F(1)(b))

.04 All Contracts subject to a living wage requirement (COMAR 21.11.10.10E(1))

.XX [[if unit has procurement control authority, include any specific provisions required under that authority. For example, MDOT's implicit requirement under COMAR 11.15.31.13]]

.XY When other conditions make it appropriate (COMAR 21.07.01.14B)

B. Other Appropriate Conditions

It is appropriate to include a liquidated damages clause when it would "provide a reasonable measure of compensation in the event of a breach where, at the time the provision is agreed to the damages are indeterminable or will be otherwise difficult to prove." *See CAS Severn, Inc. v Awalt*, 213 Md. App. 683, 694 (2013) (citations omitted).

Note: Under § 13-218(a)(4) of the State Finance and Procurement Article a liquidated damages provision is required to be included in a contract when conditions make it appropriate. Further, Under COMAR 21.07.01.14B this evaluation is to be made by the

procurement officer in consultation with the Attorney General, while a decision not to include a liquidated damages provision under this section requires the approval of the unit head under § 15-113(d) of the State Finance and Procurement Article. For the University System of Maryland, unit head means the President of a constituent institution or their authorized designee.

III. Drafting Liquidated Damages Provisions.

Liquidated damages provisions must meet three criteria: (1) provide in clear and unambiguous terms for a certain sum, (2) reasonably compensate for the damages anticipated by the breach (that is *not* be a penalty), and (3) may not be altered to correspond with actual damages after the fact. *See CAS Severn, Inc. v Awalt*, 213 Md. App. 683, 694 (2013) (citations omitted).

In line with their purpose, such provisions should state under what conditions they would apply, and how they would apply to such conditions. The amount to be assessed should be reasonably related to the nature of the type of breach that is anticipated and harm to the State should the breach occur. A common example is a set daily rate named in the condition (and itself often based on published economic models) that is then assessed for each day a project or service is delayed.

Further, such provisions should include a statement that no payment by the State, either partial or final, shall be construed to waive the State's right to seek liquidated damages. Nor should any provision cap (or otherwise limit) the amount of liquidated damages to an amount less than the total amount of liquidated damages that may be assessed pursuant to the terms of the contract.

[If unit has procurement control authority also include: [Other state units performing procurements subject to the control authority of [name of unit] under [cite to control authority in COMAR and/or STATUTE] shall apply this liquidated damages policy to such procurements.]]

A. Example Language

Language implementing specific required liquidated damages provisions is included in both the Statewide Request for Proposals (RFP) and Statewide Invitation for Bids (IFB) templates, and their support documents, as maintained by the Department of General Services' Office of State Procurement. These should be followed in the specific instances where they are directly applicable, and can be used as models in other circumstances where they do not directly apply.

Further, the Governor's Office of Small, Minority & Women Business Affairs has published "Guidelines for Liquidated Damages Provision for Contracts Containing Certified Minority Business Enterprise (MBE) Participation Goals" on its website (as of XX/XX/2023, this is available at https://gomdsmallbiz.maryland.gov/Pages/Reporting-Tool-MBE.aspx). These guidelines contain specific language to use for an MBE related liquidated damages clause, as well as instructions on how to calculate and implement that language.

Additionally, the following may be used as a model for supplies or services:

Liquidated Damages- Supplies, or Services

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the State liquidated damages of $_____ per calendar[1] day of delay.

(b) If the State terminates this contract in whole or in part under the termination for default clause, the Contractor is liable for liquidated damages accruing until the State reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of reprocurement under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor, or its subcontractors, as defined in the Delays and Extensions of time clause in this contract.

(d) The amount of liquidated damages shall not be capped (or otherwise limited) to an amount less than the total amount of liquidated damages that may be assessed pursuant to the terms of the contract.

(e) No payment by the State, either partial or final, shall be construed to waive the State's right to seek liquidated damages.

[If unit has procurement control authority also include: a statement that under its control authority, the following examples are for common conditions under the units authority, and then such example(s)].

IV. Model Plan for Responding to Deficient Performance.

The below model plan should be adapted, and expanded, for the requirements of the specific provision being enforced.

The procuring unit shall actively monitor the contract, and its contractor's performance for signs of breaching the contract requirements.

Upon identification of a potential or actual issue with performance that may trigger a liquidated damages provision, the contract manager shall:

(a) document the observed indication of deficient performance.
(b) obtain more information regarding that performance, which may include contacting the end-user of the contract, and/or the contractor; and
(c) Consult with appropriate colleagues (such as, if different, the originating procurement officer, the contract manager's supervisor, the units MBE liaison, contact at the Commissioner of Labor and Industry, counsel from the Attorney General's office, and/or unit head)

Note, whom to consult, in what order, and whether or not to do so before or after obtaining more information (especially directly from the contractor), will vary under the particular circumstances involved. A key factor is if the breach has already occurred, or is one that has

[1] If using a non calendar day (such as "business day," "work day," etc.), the provision should define that term and as appropriate specify how weekends and holidays are treated.

not yet occurred but seems more likely than previously.

If after the above steps the unit determines that there is no actual or potential breach of the contract, the particular investigation is complete.

If the unit determines that there is either an actual or potential breach of the contract, then the unit shall:
(a) communicate with the Contractor regarding the deficient performance, the need to comply with the contract requirements, and that the State preserves its rights to protect its interests under the contract (including through the imposition of liquidated damages). The exact wording of this will vary with the facts, and the particular provision involved. The unit's counsel should be consulted in drafting this communication.
(b) pursue potential avenues to address the actual harms to the State from an actual or potential breach of the contract. Again, this will vary based on the particular facts of the involved breach. This may involve obtaining alternative (or temporary performance) from elsewhere, or working with the existing Contractor to cure their performance.

Finally, if an actual breach of the contract has occurred, then the unit is to consider imposing the liquidated damages authorized by the Contract. Factors to consider include if the breach occurred for reasons beyond the control and without the fault or negligence of the Contractor (such as defined in the State's standard Delays and Extensions of time clause), the duration or magnitude of the breach, and the effort and success of the Contractor to mitigate or cure the breach. For procurements valued at $5,000,000 or more, a written decision to not pursue liquidated damages, when a specified breach associated with a liquidated damages has occurred, needs to be approved by the unit head, and the reasons for not pursuing the damages documented.