

**MEMORANDUM OF UNDERSTANDING
BETWEEN
MARYLAND DEPARTMENT OF PUBLIC SAFETY & CORRECTIONAL SERVICES
AND
MARYLAND DEPARTMENT OF GENERAL SERVICES
REGARDING
PROCUREMENT REFORM**

This Memorandum of Understanding (MOU) is made as of 2-13-, 2020, by and between The Maryland Department of Public Safety & Correctional Services ("DPSCS") and the Department of General Services ("DGS"), both of which are agencies of the State of Maryland, for the purpose of establishing, transferring and outlining procurement responsibilities and delegated authorities as a result of Procurement Reform Legislation codified as HB 1021, Chapter 590 Laws of Maryland 2017 ("HB 1021").

WHEREAS, House Bill 1021, titled 'Reorganization of State Procurement' was passed into law during the 2017 Legislative Session with most of the substantive provisions having a delayed effective date of October 1, 2019.

WHEREAS, among other things, HB1021 Section 1, which is effective October 1, 2019, removes DPSCS from the list of "Primary Procurement Units" (State Finance and Procurement Article ("SFP") §11-101(l).

WHEREAS, COMAR 21.02.01.03 Designation of Control and Procurement Authorities, the Board of Public Works' ("BPW") designation of DPSCS's procurement authority in connection with certain procurements for State correctional facilities within its jurisdiction will be repealed as being inconsistent with HB1021.

WHEREAS, COMAR 21.02.01.04H Delegation of Procurement Authority, the BPW delegation of capital construction contracts and change orders under \$200,000, capital construction related contracts or change orders under \$200,000 and architecture/engineering contracts under \$200,000 to be procured by DPSCS will be repealed as being inconsistent with HB1021.

WHEREAS, DPSCS's capital construction procurement authority will now be diverted to DGS under its delegated authority under HB 1021 and COMAR 21.02.01.04B.

WHEREAS, COMAR 21.02.05.02 establishes the DGS Office of Facilities Planning, Engineering & Construction which is responsible for obtaining services for State construction projects and administering the development and completion of these projects.

WHEREAS, capital funds are authorized through the Maryland Consolidated Capital Bond Loan (MCCBL) program to the Agency with the authority to procure Capital projects.

WHEREAS, MCCBL funds not expended for these restricted purposes may not be transferred by budget amendment or otherwise to any other purpose and shall be cancelled.

WHEREAS, prior to the year 1991, DPSCS design and capital construction procurements were part of the DGS Office of Facilities Planning, Design and Construction.

WHEREAS, when DPSCS was originally given capital construction procurement authority, DGS transferred several permanent State positions to DPSCS.

Department of General Services

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WHEREAS, now that DPSCS's capital construction program and procurement authority will be transferred back to DGS on October 1, 2019, DGS will need to have several permanent state positions transferred back from DPSCS.

NOW, THEREFORE, the parties hereto do hereby mutually agree to the following:

DPSCS will be responsible for the completion of the construction management of all capital construction contracts under contract with DPSCS prior to October 1, 2019. This includes retention of any documentation necessary for future project audits by the Department of Legislative Services, Department of Budget and Management, Office of State Procurement or any other regulatory Agency with audit oversight.

DGS delegates procurement authority for capital construction contracts and change orders associated with DPSCS contracts in the amount of \$200,000 or less to DPSCS and procurement authority for change orders associated with DPSCS procured capital construction contracts in the amount of \$200,000 or less.

DGS also delegates procurement authority of capital construction-related service contracts and change orders associated with DPSCS contracts in the amount of \$200,000 or less to DPSCS and procurement authority of change orders associated with DPSCS procured capital construction-related service contracts in the amount of \$50,000 or less.

DGS further delegates procurement authority for maintenance contracts associated with DPSCS contracts in the amount of \$200,000 or less to DPSCS and procurement authority for change orders associated with DPSCS procured maintenance contracts in the amount of \$50,000 or less.

DPSCS shall follow any and all procurement statutes and regulations under Division II of the State Finance and Procurement Article and COMAR Title 21 when procuring within its delegated authority. In delegating the above-described procurements, DGS retains its right to perform appropriate oversight to ensure that DPSCS is exercising its delegated authority with care and responsibility. As such, DPSCS is subject to any internal audit or other appropriate oversight performed by DGS and DGS may suspend or terminate any delegation of authority based on results of its audit or any other oversight implementation. DPSCS will continue to be required to obtain DGS approval for any capital construction, capital construction-related services and maintenance contracts over its delegated authority.

DGS will continue to procure all Architecture and Engineering contracts on behalf of DPSCS. DGS may delegate the management of certain contracts to DPSCS (to be determined on a case by case basis).

DPSCS will continue to report per the PAAR (Procurement Agency Activity Report) requirements and submit PAAR reports in accordance with instructions from the Office of State Procurement.

DPSCS design and construction items that require BPW approval or exceed the authority of DPSCS shall be sent through the DGS Office of Facilities Planning, Design, Construction & Energy ("FPDCE") Department Procurement Review Board ("DPRB") for approval prior to submission to the Office of State Procurement.

DPSCS non-design and construction items that require BPW approval or exceed the authority of DPSCS shall be sent through the DGS Office of State Procurement for review and approval.

DPSCS will transfer the project management of all active design projects with construction estimates over \$200,000 to DGS for completion of the design phase and procurement of the construction as funding permits.

DGS will coordinate with a representative of DPSCS for all design and construction projects related to DPSCS sites or operations, including allowing a representative of DPSCS to sit on the procurement evaluation committee for all procurements related to DPSCS design and construction.

DPSCS shall handle emergency procurement per the requirements of COMAR 21.05.06 Emergency & Expedited Procurements. All reports of emergency procurements shall be made directly to the Board of Public Works, within the 45 days as allotted by COMAR. Such reports of emergency procurements shall include a clear description of the impact to public health, safety and welfare.

DPSCS may request emergency funding assistance by letter request to DGS from the Secretary of DPSCS and shall include a clear description of the impact to the public health, safety and welfare. Further, the request shall clearly state if procurement assistance and technical assistance are being sought from DGS.

Capital funding for all new projects after 10/1/2019 will be transferred to DGS's Capital account for management.

Capital funding for all construction contracts executed prior to 10/1/2019 will remain at DPSCS for management of funds.

The attached chart titled "DPSCS Capital Fund Sources" shall dictate the location of the various capital fund sources as of October 1, 2019 that are currently held at DPSCS and is labeled as Exhibit A to this MOU.

Based on approval and processing by the Department of Budget and Management (DBM), DPSCS will transfer the following permanent State positions to DGS.

Name	PIN	DPSCS Role	DGS Role (Unit at DGS)
vacant	052300	Admin Officer III – (Procurement)	Small Procurement (FPDCE)
vacant	064659	Admin Spec III – (Construction Inspection)	Construction Inspection (FPDCE)
Santagustin, Jesus	065039	Bldg. Construction Engineer – (Construction Inspection)	Construction Inspection (FPDCE)
Hekmatian, Hamid	005753	Capital Projects Asst Dir. – (Asst. Director of Design)	Capital PM (FPDCE)
vacant	033554	Agency Project Engr-Arch III – (Mechanical Engineer)	Facilities Eng. Project Manager (FPDCE)
Vacant	070019	Correctional Supply Officer 1	Accountant (Capital Fiscal)

DPSCS will provide access to DPSCS facilities to assigned DGS FPDCE staff. If necessary DPSCS will provide separate identification cards or other security measures in order to ensure access of appropriate DGS staff.

This MOU may be amended only in writing and is effective on the last date executed by all parties hereto

The monitors of this MOU are:

For DGS: Nelson E. Reichart, Deputy Secretary
The Department of General Services
301 W Preston Street, Suite 1400
Baltimore, MD 21201
410-767-4960
Nelson.Reichart@maryland.gov

For DPSCS: Christopher McCully, Deputy Secretary for Administration
The Department of Public Safety and Correctional Services
300 East Joppa Road, Suite 1000
Towson, MD 21286
Christopher.McCully1@maryland.gov

This agreement may be executed in counterparts; all such counterparts shall be deemed one agreement.

In WITNESS WHEREOF, the parties have executed this agreement by causing the same to be signed as of the last day and year first set forth below.

Department of Public Safety and Correctional Services

By: 

Name: Robert L. Green

Title: Secretary

Date of Signature: 2/4/20

Department of General Services

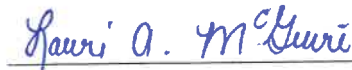
By: 

Name: Ellington Churchill

Title: Secretary

Date of Signature: 2-13-2020

Approved as to form and legal sufficiency by:



Assistant Attorney General

Maryland Department of General Services



Assistant Attorney General

Maryland Department of Public Safety and Correctional Services