

Q3 BOARD OF PUBLIC WORKS QUARTER 3 | 2024 SUMMARY



Brooke E. Lierman
Comptroller of
Maryland

BY THE NUMBERS

The BPW met five times during Q3 2024 and took the following actions:

539

total items approved

114

new contracts



\$1.96 billion

state expenditures

**\$2.99
billion**

total state expenditures

425

modifications, renewals,
grants, settlements



\$1.04 billion

state expenditures

48

new prime
contracts to certified
small businesses

\$80 million

The **Small Business Reserve Program** sets a 20% annual goal for all state procurement expenditures with certified small businesses.

17

new prime
contracts to MBEs

\$39 million

50

new contracts
with MBE goals

18%

average MBE subcontracting
goal for new contracts

The **Minority Business Enterprise (MBE) Program** sets a 29% annual goal for state procurement expenditures with certified MBEs as prime or subcontractors.

The BPW consists of Governor Wes Moore, Treasurer Dereck Davis and Comptroller Brooke Lierman. The Board meets every two weeks and is responsible for approving most contracts over \$200,000, overseeing the issuance of bonds, acquiring and transferring state property, approving wetlands licenses and place-based investing programs (see below).

PLACE-BASED INVESTMENT PROGRAMS

The Capital Grants Program

provides funding to local governments and nonprofits for projects such as community centers, health facilities, museums, and affordable housing.

In Q3 2024, the BPW approved **\$75 million** for **113 projects**.

Community Parks and Playgrounds

provides funding to Maryland's cities and towns to rehabilitate and build parks and playgrounds.

In Q3 2024, the BPW approved **\$4.3 million** for **30 projects**.

Program Open Space

preserves natural areas for public use and to protect watersheds and wildlife through land acquisition and conservation easements.

In Q3 2024, the BPW approved **\$23 million** for **30 projects**.

Local Parks and Playgrounds Infrastructure Program

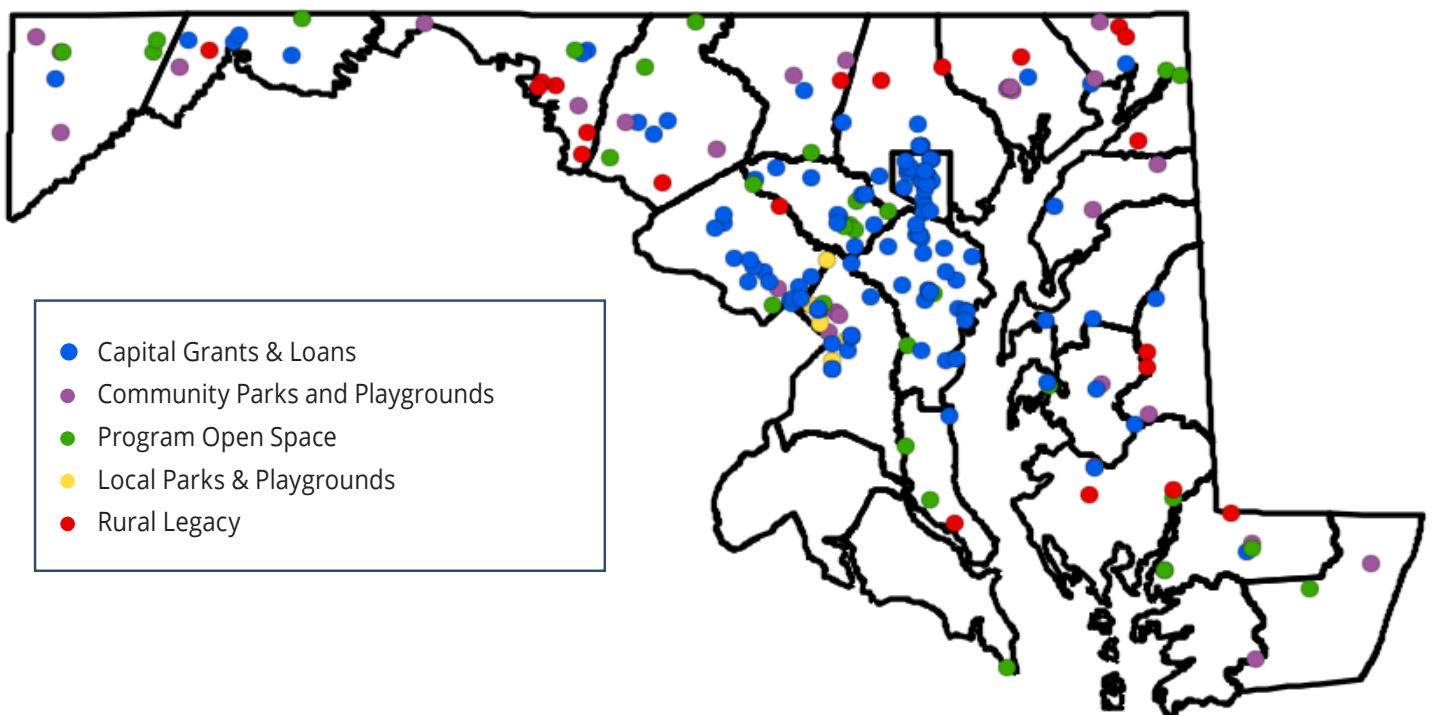
restores and creates parks and green space systems.

In Q3 2024, the BPW approved **\$4.6 million** for **6 projects**.

Rural Legacy Program

preserves large, contiguous tracts of land to enhance natural resources, agricultural, forestry and environmental protection.

In Q3 2024, the BPW approved **\$12 million** for **21 projects**.



BPW AT WORK

The Bid Protest Process

Public testimony is an important part of BPW meetings. Elected officials, representatives from nonprofit organizations, and concerned citizens regularly comment on specific agenda items. Occasionally, discontented bidders share their frustrations about a solicitation, bid, or contract for which they were not selected in front of the Board. **The State has established a regulated process and separate legal entity devoted to considering contract protests, claims and disputes.**

If a current or prospective offeror, contractor, or bidder believes they were aggrieved by a solicitation, award, or proposed award of a contract, they can file a protest with the agency that awarded the contract. Contract protests and disputes must adhere to a specific process and meet clear deadlines outlined in state law ([COMAR 21.10 – Administrative and Civil Remedies](#)). If the offeror/contractor/bidder disagrees with the decision delivered by the agency's procurement officer, they can file an appeal to the [Maryland State Board of Contract Appeals \(MSBCA\)](#). The same law outlines requirements for filing an appeal with MSBCA.

The MSBCA is an independent agency within the executive branch that adjudicates bid and contract disputes between state government and vendors doing business with the state. With advice and consent from the state Senate, the Governor appoints the Board's six members to five-year terms and names the Board Chair. The MSBCA may subpoena witnesses and documents and may compel the testimony of witnesses. Any aggrieved party may appeal a final decision of the MSBCA for judicial review. State law does permit the BPW to award a contract pending protest or appeal if it finds that executing the contract without delay is [“necessary to protect substantial State interests.”](#) It is uncommon, however, that state agencies request BPW approval on a contract that is actively under protest with a procurement officer or under appeal with the MSBCA. When the BPW makes an award under protest or appeal, the MSBCA does not have the authority to overturn the BPW's decision.

POLICY CORNER

State Preference Programs

Definition: An “in-state” or “local preference” program **creates an advantage** for vendors competing for government contracts **based on their location**. These programs are typically created by law or regulation that establish criteria to define “in-state” or “local” (such as residency requirements for the vendor, or origination of the product/service) and a formula for applying an advantage (typically discounting local bid/proposal pricing by a certain percentage). The intention of preference programs is to foster state/local economic development by directing more contract awards to local (often small) businesses.

Examples: The federal government prohibits the use of local preference on any state/local projects that rely upon federal dollars for their funding, but states and local governments can adopt laws related to preference for projects that are not federally funded. Maryland has two. First, [COMAR 21.05.02.14](#) requires preference to be applied as a **tiebreaker**. Second, [COMAR 21.05.01.04](#) requires that **reciprocal preference** be applied. This means that Maryland can apply a disadvantage to each bid received from vendors located in states with local preference policy equivalent to the preference the out-of-state bidders would receive over Maryland firms in their home state.

Pros and Cons: Preference policies and programs can help local firms win government contracts, increasing their revenues and boosting the local economy via job creation, additional spending, and increased tax revenue. The policy can have the added benefit of driving prices down because out-of-jurisdiction bidders know that local bidders are going to get the preference and must try to price-match. On the other hand, a preference policy can discourage participation from out-of-

jurisdiction bidders who know they will be at a disadvantage to area businesses, reducing competition. Further, a preference program in one state often “triggers” the adoption of reciprocal preference programs in other states, ultimately disadvantaging the firms that the policy intends to help any time they’re competing for bids out of their home jurisdiction. Finally, preference policy also adds a layer of complexity in an already complex government procurement process, which could deter bidders or increase the likelihood of protests.

Analysis: Assessments of several local government preference programs exist, with mixed results. The University of Illinois at Urbana-Champaign conducted an [economic impact analysis](#) of a local business preference program under consideration by the Springfield city council. The policy proposed an 8% bid credit to local businesses bidding on city-funded public works projects. The study suggested that the preference program would deliver great value to taxpayers, in the form of economic development, training opportunities for young residents, job creation or retention, and local tax revenues. Alternatively, the Municipal Research and Services Center (MRSC), a non-profit that supports local governments in Washington State, studied and [advised against county level preference programs](#), stating that they are “inequitable because it results in part of the tax dollars being spent in “subsidy” instead of value.”

No study or cost-benefit analysis has been conducted for the State of Maryland to assess the true, dollar for dollar impact a preference program may have on Maryland’s economy and its suppliers. Given that an estimated [40% of prime awards in Maryland go to out-of-state firms](#), performing such a study would be a helpful exercise to inform future policy decisions.

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