

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 01 GENERAL PROVISIONS

### Chapter 02 Terminology

Authority: State Finance and Procurement Article, §§11-101 and 12-101, Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (28) (text unchanged)

(29) "Control *authority or agency*" means a department having the power to supervise, regulate, command, approve or disapprove actions of a procurement agency or using agency.

(30) – (98) (text unchanged)

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 01 GENERAL PROVISIONS

### Chapter 03 Applicability

Authority: State Finance and Procurement Article, §§11-201—11-203, 12-101, and 12-104; Natural Resources Article, §3-103; Annotated Code of Maryland; Ch. 198, Acts of 2009; Chs. 428, 495, and 713, Acts of 2010; *Chs. 108, 111, and 268, Acts of 2017*

#### .01 Exemptions.

A. The following are exempt from applicability of this title:

(1) – (3) (text unchanged)

(4) Contracts or like business agreements between a State agency and:

(a) Another State agency, except as provided under COMAR [21.14.01.02B] *21.05.12.02B*;

(b) An agency or political subdivision of the State or other governments, except as provided under COMAR [21.14.01.02B] *21.05.12.02B*;

(c) A government, including the government of another state, of the United States, or of another country; or

(d) A bistate, multistate, bicounty, or multicounty governmental agency.

(5) – (16) (text unchanged)

(17) The Board of Trustees of the State Retirement and Pension System, except as provided by State Finance and Procurement Article, Title 14, Subtitle 3, Annotated Code of Maryland, and COMAR 21.11.03, for:

(a) Services of managers to invest the assets of the State Retirement and Pension System, including real and personal property;

(b) Expenditures to manage, maintain, and enhance the value of the assets of the State Retirement and Pension System in accordance with investments guidelines adopted by the Board of Trustees; [and]

(c) Services related to the administration of the optional retirement program under State Personnel and Pensions Article, Title 30, Annotated Code of Maryland; *and*

(d) *Expenditures for the safe custody, domestic or global, of investments as provided under §21-123(F) of the State Personnel and Pensions Article;*

(18) – (34) (text unchanged)

(35) The Department of General Services for [renovation] *the rehabilitation* of a structure that[:

(a) Was built during the 18th or 19th century; and

(b) I] *is listed in or eligible for listing in the National Register of Historic Places, to the extent the procurement is necessary to preserve the historic fabric of the structure impacted by the rehabilitations, as determined by the Department of General Services in consultation with the Maryland Historical Trust;*

(35-1) (text unchanged)

(35-2) The Maryland Clean Energy Center, except as provided by State Finance and Procurement Article, Title 14, Subtitle 3, Annotated Code of Maryland; [and]

(35-3) *The State Archives for preservation, conservation, proper care, restoration, and transportation of fine art or decorative art that is in the custody of the Commission on Artistic Property and owned by or loaned to the State; and*

(36) (text unchanged)

B. – D. (text unchanged)

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 02 STATE PROCUREMENT ORGANIZATION**

### **Chapter 01 Board of Public Works**

Authority: Education Article, §§14-204, 14-205, and 14-405; State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, 13-108 and 15-112; Annotated Code of Maryland; Ch. 471, Acts of 1991; Ch. 608, Acts of 1999; Ch. 581, Acts of 2016

#### **.05 Review and Approval of the Award of Procurement Contracts.**

##### **A. Action Agendas.**

(1) – (2) (text unchanged)

(3) The procurement agencies shall:

(a) Pursuant to COMAR 21.05.06.02, submit, as an appendix to the Board Secretary's Action Agenda for the Board's subsequent review, a separate item for each award of an emergency procurement contract or emergency contract modification that, with prior modifications, aggregates in excess of [\$25,000] \$50,000. Each procurement agency shall be responsible for defending its own emergency procurements to the Board.

(b) Pursuant to COMAR 21.05.06.03, submit each expedited item as an appendix to the Department of Transportation's action agenda whenever the Maryland Port Commission or the Maryland Aviation Administration requests the Board's approval to make an expedited procurement, and whenever the outcome of a previously approved expedited procurement is being reported.

(4) – (7) (text unchanged)

##### **B. Procurement Agency Activity Reports (PAAR).**

(1) The departments, the Department of Public Safety and Correctional Services, and the Maryland Environmental Service (for those specific projects as may be authorized from time to time by the General Assembly and to the extent so authorized) shall prepare and submit to the Board Procurement Agency Activity Reports (PAAR) covering all procurement contracts in excess of [\$25,000] \$50,000, except contracts for the purchase of commodities and supplies, made pursuant to this chapter during the previous calendar month or not previously reported.

(2) In addition, a PAAR shall include a report of:

(a) All contract modifications and option renewals greater than [\$25,000] \$50,000, but less than the amount requiring Board approval, approved by the departments, the Department of Public Safety and Correctional Services, and the Maryland Environmental Service (for those specific projects as may be authorized from time to time by the General Assembly and to the extent so authorized) pursuant to this chapter;

(b) All cancellations of solicitations or rejections of all bids or proposals approved by the departments, the Department of Public Safety and Correctional Services, or the Maryland Environmental Service pursuant to COMAR 21.06.02; and

(c) All construction contract change orders greater than [\$25,000] \$50,000, but less than the amount requiring Board approval, approved by the Departments of General Services, Transportation, Public Safety and Correctional Services, and the Maryland Port Commission pursuant to this chapter.

(3) – (5) (text unchanged)

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 02 STATE PROCUREMENT ORGANIZATION**

### **Chapter 05 Department of General Services**

Authority: State Finance and Procurement Article, §§4-204, 12-101, 12-107(b)(3), 12-108, and 13-108(a)(1), Annotated Code of Maryland.

#### **.04 Commodity Procurement.**

##### **A. Delegation of Purchasing Authority to Using Agencies.**

(1) – (3) (text unchanged)

(4) Scheduled Purchase Items and Contract Items Supersede any Exempt or Delegated Procurement. The Department operates a regularly scheduled purchase program through which a using agency may plan and order needed commodities. The Department also develops term contracts for various commodities. Except for purchases off a local jurisdiction intergovernmental cooperative purchasing agreement, a using agency may not purchase from an alternate source an item which is available through the regularly scheduled purchase program or an item which is available through a term requirements or indefinite quantity contract except where an item can be purchased from another vendor when the total cost is less than that of the item on a schedule resulting from an intergovernmental agreement and the price of the purchase does not exceed \$1,000. A written determination shall be made that compares all elements of cost demonstrating the lower cost. Additionally, the total cost per year for all items purchased from an alternate vendor(s) [shall] may *not* exceed \$10,000 for each agency.

B. – G. (text unchanged)

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

### Chapter 01 General Provisions

Authority: State Finance and Procurement Article, §§11-201, 11-205, 12-101, 13-102, 13-110, 13-202, and 14-401, Annotated Code of Maryland; Ch. 216, Acts of 2009

#### **.01 Methods of Source Selection.**

Unless otherwise authorized by law, all State procurement contracts shall be awarded by one of the following methods, *at the procurement officer's discretion, where applicable*:

- A. – E. (text unchanged)
- F. Noncompetitive negotiated procurement under COMAR 21.05.12.04; [or]
- G. Intergovernmental cooperative purchasing under COMAR 21.05.09[.] ;
- H. *Architectural and Engineering Services Qualification Based Selection*; or
- I. *Master Contracting under COMAR 21.05.13.*

#### **[.02 Preference for Competitive Sealed Bidding.**

A. Except as provided in §B of this regulation, contracts in excess of \$25,000 shall be awarded by competitive sealed bidding unless the procurement officer, with the approval of the agency head, determines that:

- (1) Specifications cannot be prepared that permit an award on the basis of either the most favorable bid price or the most favorable evaluated bid price;
- (2) There is only one available source;
- (3) There is an emergency which leaves insufficient time to use this method; or
- (4) There is some other reason in the public interest to use one of the other authorized methods which is so compelling as to override the general public policy in favor of competitive sealed bidding.

B. Procurement by competitive sealed proposals is the preferred method for awarding State procurement contracts for human, social, cultural, and educational services, and real property leases.] ***Repealed***

#### **.03 - .04 (text unchanged)**

#### **.05 Permissible Disclosures.**

After a solicitation for bids under COMAR 21.05.02 or for proposals under COMAR 21.05.03 or 21.12.02—21.12.05 is issued and until a procurement officer makes a recommendation for award, a procurement officer may disclose to a person outside the Board of Public Works and the Executive Branch only:

- A. Whether a decision has been made regarding a solicitation; and
- B. Information that is available to the public under [State Government Article, §§10-611—10-628, Annotated Code of Maryland] *the Public Information Act, MD. Code Ann., General Provisions Article, Title 4.*

#### **.06 - .08 (text unchanged)**

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

### Chapter 02 Procurement by Competitive Sealed Bidding

Authority: State Finance and Procurement Article, §§12-101, 13-103, [13-204,] 13-210, and 14-301—14-308, Annotated Code of Maryland; *Chs. 586,587, Acts of 2017*

#### **.04 Public Notice.**

- A. (text unchanged)
- B. Publication. Notice of an invitation for bids for which the bid amount is reasonably expected to exceed [\$25,000] *\$50,000* shall be published in eMaryland Marketplace unless the resulting contract is reasonably expected to be performed entirely outside this State or the District of Columbia. Publication shall be at least 20 days before the bid submission date. Publication of notice less than 20 days before bid submission is defective unless notice of the project is not required by State law.

**.05 Prequalification of Bidders.**

A. When a procurement agency decides that prequalification of bidders is appropriate, the criteria for prequalification of bidders shall be set forth clearly in the invitation for bids.

B. Prequalification does not prevent a determination by the procurement officer between the time of the bid opening or receipt of offers and the making of an award that:

- (1) A prequalified person is not responsible;
- (2) A person who is not prequalified at the time of bid opening or receipt of offers is responsible; or
- (3) A prequalified bidder be disqualified and removed from the list due to a change in circumstances which affects their ability to perform.

C. The fact that a person is not prequalified does not bar him from submitting a bid.] *Repealed*

**.06 - .12 (text unchanged)**

## **Title 21 STATE PROCUREMENT REGULATIONS**

### **Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS**

#### **Chapter 03 Procurement by Competitive Sealed Proposals**

Authority: State Finance and Procurement Article, §§12-101, 13-104, and 13-105, Annotated Code of Maryland

**.01 [Conditions for Use] Preference.**

[A. Preference.] Procurement by competitive sealed proposals is the preferred method for:

- (1) the procurement of human, social, cultural or educational services[.]; and
- (2) real property leases.

[B. Determinations. Except for the procurement of human, social, cultural or educational services, or real property leases, before a procurement by competitive sealed proposals may be conducted, the procurement officer, with the written approval of the agency head or designee, shall make a determination in accordance with COMAR 21.05.01.02 that competitive sealed bidding cannot be used because:

- (1) Specifications cannot be prepared that would permit an award based solely on price; or
- (2) Competitive sealed bidding is not practicable or is not advantageous to the State and there is compelling reason to use the source selection methodology set forth in this chapter.]

**.02 Solicitation of Proposals.**

A. – F. (text unchanged)

G. Receipt of Proposals

(1) (text unchanged)

(2) The identity of an offeror and the register of proposals may not be disclosed before the procurement officer makes a determination recommending the award of the contract pursuant to Regulation .03F of this chapter. After contract award, proposals shall be open to public inspection subject to the provisions of [State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland] *the Public Information Act, MD. Code Ann., General Provisions Article, Title 4.*

**.03 Evaluation of Proposals, Negotiations and Award.**

A. Evaluation.

(1) – (2) (text unchanged)

(3) Economic Benefits Evaluation Factor.

(a) This subsection applies only to proposals that the procurement officer reasonably expects to exceed [\$25,000] \$50,000. When a point system is used in the evaluation of these proposals, up to 10 percent of the total allocable technical points may be awarded under an economic-benefits evaluation factor. If a point system is not used, an economic-benefits evaluation factor may be included in the technical evaluation factors and be ranked in its relative order of importance, as the procurement officer determines.

(b) – (c) (text unchanged)

(4) – (6) (text unchanged)

B. – G. (text unchanged)

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS**

### **Chapter 06 Emergency and Expedited Procurements**

Authority: State Finance and Procurement Article, §§12-101 and 13-108, Annotated Code of Maryland

#### **.01 Application.**

A. Emergency Procurement. Regulation .02 of this chapter is established for procurement of supplies, services, maintenance, commodities, construction, or construction-related services in excess of [\$25,000] \$50,000 when competitive sealed bidding or competitive sealed proposals cannot be used in awarding or modifying a contract because of an emergency. Regulation .02 of this chapter does not apply to field change orders incidental to construction contracts. The procurement officer, with the approval of the agency head or designee, may award an emergency contract by other than competitive sealed bidding under COMAR 21.05.02 or competitive sealed proposals under COMAR 21.05.03.

B. The expedited procurement method may be used only by the Maryland Port Commission or the Maryland Aviation Administration. Regulation .03 of this chapter is established for procurement of supplies, services, maintenance, commodities, construction, or construction-related services in excess of [\$25,000] \$50,000 when competitive sealed bidding or competitive sealed proposals cannot be used in awarding a contract because urgent circumstances require expedited action, and the action is in the public interest and outweighs the benefits of both competitive sealed bidding and competitive sealed proposals.

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS**

### **Chapter 07 Small Procurement Regulations ([\$25,000] \$50,000 or Less)**

Authority: State Finance and Procurement Article, §§12-101, 13-109, 14-301—14-308, and 14-406, Annotated Code of Maryland

#### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) – (3) (text unchanged)

(4) "Small procurement" means the use of the procedures set forth in this chapter to:

(a) Obtain items reasonably expected by the procurement officer to cost [\$25,000] \$50,000 or less; *or*

(b) With respect to those procurements set forth in COMAR 21.01.03.03B, provide annual gross revenues to the contractor of [\$25,000] \$50,000 or less; *or*

(c) With respect to the Department of General Services *or Department of Transportation*, procure construction with a value of [\$50,000] \$100,000 or less.

(5) (text unchanged)

#### **.02 Authority.**

(text unchanged)

#### **.03 Application.**

A. – B. (text unchanged)

#### **.04 Categories.**

(text unchanged)

A. – B. (text unchanged)

C. Category III Small Procurements — More than \$15,000 but not more than [\$25,000] \$50,000, and, if a construction procurement by the Department of General Services *or Department of Transportation*, not more than [\$50,000] \$100,000.

#### **.05 Prohibitions.**

A. (text unchanged)

B. A procurement contract of more than [\$25,000] \$50,000 may not be awarded under the authority of this chapter unless:

(1) (text unchanged)

(2) The Department of General Services *or Department of Transportation* procures construction valued at [\$50,000] \$100,000 or less.

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

### Chapter 08 Mandatory Written Solicitation Requirements

Authority: State Finance and Procurement Article, §§3-412, 11-206, 12-101, 13-207, 13-218, 13-221, [13-317,] 14-303, 14-308, 14-406, 16-102, 16-202, 16-203, 17-401—17-402, and Title 19; Election Law Article, §§14-101—14-108; Annotated Code of Maryland; Ch. 293, Acts of 2009

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

### Chapter 09 Intergovernmental Cooperative Purchasing

Authority: State Finance and Procurement Article, §§12-101, 13-102, and 13-110, Annotated Code of Maryland; *Ch.774, Acts of 2017*

#### **.04 Determinations Required.**

[Before sponsoring or participating in an intergovernmental cooperative purchasing agreement, the procurement officer of the primary procurement unit shall make a written determination that it is in the best interest of the State to do so, and which includes a statement that participation in the agreement:]

A. [Will] *The procurement officer for a primary procurement unit shall make a determination in accordance with Section B or C of this regulation before the primary procurement unit may:*

(1) [Provide cost benefits to the State,] *Initially sponsor or participate in an intergovernmental cooperative purchasing agreement;*

(2) [Promote administrative efficiencies, or] *Renew an intergovernmental cooperative purchasing agreement; or*

(3) [Promote intergovernmental cooperation; and] *Modify an intergovernmental cooperative purchasing agreement.*

B. [Is not intended as a means to evade the purposes set forth under COMAR 21.01.01.03.] *A determination under Section A (1) of this regulation shall be in writing and include:*

(1) *Sufficient evidence that the intergovernmental cooperative purchasing agreement:*

(a) *Will provide cost benefits to the State, or*

(b) *Will promote administrative efficiencies, or promote intergovernmental cooperation; and*

(2) *A statement how the intergovernmental cooperative purchasing agreement:*

(a) *Is in the best interest of the State; and*

(b) *Is not intended as a means to evade the purposes set forth under COMAR 21.01.01.03.*

C. *A determination under Section A(2) or A(3) of this regulation shall be in writing and include:*

(1) *Sufficient evidence that the intergovernmental cooperative purchasing agreement:*

(a) *Will provide cost benefits to the State; and*

(b) *Will promote administrative efficiencies, or promote intergovernmental cooperation; and*

(2) *A statement how the intergovernmental cooperative purchasing agreement:*

(a) *Is in the best interest of the State; and*

(b) *Is not intended to evade the purposes set forth under COMAR 21.01.01.03.*

D. *A primary procurement unit shall post each determination required under this regulation on the primary procurement unit's website before sponsoring, participating in, renewing, or modifying an intergovernmental cooperative purchasing agreement.*

#### **.05 Approvals Required.**

Before awarding, *sponsoring*, or participating in an intergovernmental cooperative purchasing agreement, the procurement officer shall obtain the approval of the primary procurement unit head, and any other approvals as required under this title.

#### **.06 Contract Types.**

(text unchanged)

#### **.07 Public Notice.**

(text unchanged)

#### **.08 State Sponsored Agreements.**

If a primary procurement unit sponsors an intergovernmental cooperative purchasing agreement:

A. (text unchanged)

- B. The State's portion of the contract shall be awarded in the same manner as the contract would be awarded under this title if the unit was the sole participant under the contract, *including compliance with all notice requirements*; and  
C. (text unchanged)

# ***Title 21 STATE PROCUREMENT REGULATIONS***

## ***Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS***

### ***Chapter 13 Master Contracting***

*Authority: State Finance and Procurement Article, §§12-101, 13-101, 13-102, 13-113, and 13-114, Annotated Code of Maryland*

ALL NEW

#### ***.01 Definitions.***

A. *In this Chapter, the following words have the meaning indicated.*

- (1) *“Designated procurement unit” means:*
  - (a) *The Department of Budget and Management;*
  - (b) *The Department of General Services;*
  - (c) *The Department of Information Technology; or*
  - (d) *The Department of Transportation.*
- (2) *“Master contract” means an executed standard contract for a specified period of time between the State and a person approved as a master contractor that is subject to secondary competition for the awarding of work.*
- (3) *“Master contracting” means a streamlined procurement method that provides for the qualification of bidders and offerors for the procurement of services, supplies, or commodities, that is subject to secondary competition for the awarding of work.*
- (4) *“Master contractor” means a person awarded a master contract and qualified to compete to provide categories of services, supplies, or commodities under secondary competition.*
- (5) *“Secondary competition” means a procurement process in which only approved master contractors may compete to provide the services, supplies, or commodities under the procurement.*

#### ***.02 Conditions for Use.***

- A. *Only a designated procurement unit may use the master contracting procurement method for selecting qualified bidders or offerors to be awarded master contracts.*
- B. *A unit of the Executive Branch may issue a secondary competition solicitation to master contractors.*

#### ***.03 Solicitations for Awarding Master Contractors.***

*The solicitation for awarding master contracts shall include:*

- A. *The categories of services, supplies, or commodities in which an offeror may submit a proposal for qualification.*
- B. *Information concerning proposal submission requirements, including the date, time, and place for the receipt of proposals.*
- C. *A statement that discussions may be conducted with those responsible offerors that submit proposals initially judged by the procurement officer to be reasonably susceptible of being selected for award. However, if the request for proposals so notifies all offerors, discussions need not be conducted:*
  - (1) *With respect to prices that are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;*
  - (2) *If time of delivery or performance does not permit discussions; or*
  - (3) *If it can be demonstrated clearly from the existence of adequate competition or accurate prior cost experience with the particular item, that acceptance of an initial offer without negotiation would result in a fair and reasonable price.*
- D. *The mandatory solicitation requirements set forth in COMAR 21.05.08.*
- E. *All required contract terms and conditions.*
- F. *Public Notice.*
  - (1) *Distribution. Solicitations or notices of the availability of solicitations shall be mailed or otherwise furnished to a sufficient number of vendors for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long solicitations may be obtained, generally describe the service, supply, or commodity desired, and may contain other appropriate information.*
  - (2) *Publication. Notice of solicitations for which the proposal is reasonably expected to exceed \$50,000 shall be published in eMaryland Marketplace unless the resulting contract is reasonably expected to be performed entirely outside this State or the District of Columbia. Publication shall be at least 20 days before the proposal submission date. Publication of notice less than 20 days before proposal submission is defective unless notice of the project is not required by State law.*

G. Proposal preparation time is the period of time between the date of publication of the solicitation and the time and date set for receipt of proposals. The proposal preparation time shall be a minimum of 20 days.

H. Pre-Proposal Conferences.

(1) Pre-proposal conferences may be conducted by the procurement officer or designee to explain the procurement requirements.

(2) If a pre-proposal conference is held, it shall be announced to all prospective offerors who were sent a solicitation or who are known by the procurement officer to have obtained the solicitation documents.

(3) Any pre-proposal conference should be held long enough after the solicitation has been issued to allow prospective offerors to become familiar with it, but sufficiently before proposal opening to allow consideration of the pre-proposal conference results in the preparation of proposals.

(4) Attendance at a pre-proposal conference may be encouraged, but may not be made mandatory except to the extent required under COMAR 21.11.03.09C(2)(e). Nothing stated at the pre-proposal conference may change the solicitation unless a change is made by the procurement officer by written amendment.

(5) Pre-Proposal Conference Records.

(a) When a pre-proposal conference is held in connection with a procurement that is expected to exceed \$100,000, the procurement officer shall ensure that a written record of the conference is prepared as soon as practicable and that the record is sent to all prospective offerors who were sent a solicitation or who are known by the procurement officer to have obtained the solicitation.

(b) When a pre-proposal conference is held and a conference summary is made, the procurement officer shall ensure that the summary is sent to all prospective offerors who were sent a solicitation or who are known by the procurement officer to have obtained the solicitation.

(c) The record or summary of a pre-proposal conference is a public record that is open to public inspection during ordinary business hours.

(d) Electronic records and transmissions of a pre-bid conference satisfy the requirements of this regulation.

(6) Electronic Pre-Proposal Conferences.

(a) Electronic pre-proposal conferences may be conducted if specifically permitted or required in the solicitation.

(b) An electronic pre-proposal conference shall permit interactive communication between all prospective offerors and the procurement officer.

(c) If pre-proposal conferences are conducted by electronic means, prospective offerors shall be notified of the:

(i) Date and time set for the electronic pre-proposal conference; and

(ii) Manner and duration of the interactive session.

I. Amendments to Solicitations.

(1) Form. Each amendment to a solicitation shall be identified as such and shall require that the offeror acknowledge its receipt. The amendment shall reference the portion of the solicitation it amends. The procurement officer shall authorize the issuance of an amendment.

(2) Distribution. Amendments shall be sent to all prospective offerors who were sent a solicitation or who are known to the procurement officer to have obtained the solicitation documents.

(3) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their proposals. If the time and date for receipt of proposals does not permit preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

J. Late Proposals, Withdrawals, and Modifications.

(1) Policy. Any proposal received at the place designated in the solicitation after the time and date set for receipt of proposal is late. Any request for withdrawal or request for modification received at the place designated in the solicitation after the time and date set for receipt of proposals is late.

(2) Treatment. A late proposal, late request for modification, or late request for withdrawal may not be considered. Upon the written approval of the Office of the Attorney General, exceptions may be made when a late proposal, withdrawal, or modification is received before contract award, and the proposal, modification, or withdrawal would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees. A late modification of a successful proposal that makes its terms more favorable to the State shall be considered at any time it is received and may be accepted upon the written approval of the Office of the Attorney General.

(3) Records. A record shall be made of each request for late proposal acceptance, modification, or withdrawal which shall be retained in the appropriate procurement file.

K. Receipt of Proposals.

(1) Proposals and modifications shall be held in a secure place until the established due date. Proposals may not be opened publicly but shall be opened in the presence of at least two State employees. After the established due date, a register of proposals shall be prepared that identifies each offeror.

(2) The identity of an offeror and the register of proposals may not be disclosed before the procurement officer makes a determination recommending the award of the contract pursuant to Regulation .04B of this chapter. After contract award, proposals shall be open to public inspection subject to the provisions of the Public Information Act, MD. Code Ann., General Provisions Article, Title 4.

**.04 Evaluation of Proposals for Awarding Master Contracts and Debriefings.**



A. The designated procurement unit shall establish a procedure for the consideration and approval of proposals for qualification of multiple offerors in each category of services, supplies, or commodities.

B. Upon completion of all discussions, the procurement officer shall make a determination recommending award of the master contracts to the responsible offerors whose proposals are determined to be qualified, considering price and evaluation factors set forth in the solicitation. After obtaining the approval of this recommendation by the agency head or designee, all other approvals required by this title, and certification by the appropriate fiscal authority as to the availability of funds, the designated procurement unit may award the master contracts.

C. Notice of Award. After a master contract is entered into, the designated procurement unit shall publish notice of its award in eMaryland Marketplace not more than 30 days after the execution and approval of the master contract.

D. Debriefing of Unsuccessful Offerors

(1) When a contract is to be awarded on some basis other than price alone, unsuccessful offerors may submit a written request for a debriefing to the procurement officer within a reasonable time. Debriefing shall be provided at the earliest feasible time after the procurement officer receives a request for a debriefing and before the contract award is presented to the agency head or designee or the Board for approval. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and contract award.

(2) Debriefing shall:

(a) Be limited to discussion of the unsuccessful offeror's proposal and may not include specific discussion of a competing offeror's proposal.

(b) Be factual and consistent with the evaluation of the unsuccessful offeror's proposal; and

(c) Provide information on areas in which the unsuccessful offeror's technical proposal was deemed weak or deficient.

(3) Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of an evaluation committee, but may include a summary of the procurement officer's rationale for the selection decision and recommended contract award.

(4) A summary of the debriefing shall be made a part of the contract file.

#### **.05 Secondary Competition Solicitation.**

A. A unit of the Executive Branch that requires services, supplies, or commodities available under a master contract may, with the approval of the designated procurement unit that awarded the master contract, issue a secondary competition solicitation to master contractors.

(1) If the unit of the Executive Branch expects the total cost of the services, supplies, or commodities in the secondary competition to exceed \$100,000, the unit shall issue the secondary competition solicitation to all master contractors in the appropriate category established by the designated procurement unit.

(2) If the unit of the Executive Branch expects the total cost of the services, supplies, or commodities in the secondary competition to be \$100,000 or less, the unit shall issue the secondary competition solicitation to a minimum of six master contractors or all master contractors, whichever is less, in the appropriate category established by the designated procurement unit. If the total number of master contractors available to be solicited exceeds six, the procurement officer shall make a written determination including the reasons why the particular master contractors were selected to be solicited.

B. The master contract shall specify the type of secondary competition solicitation to be used from the following:

(1) Task Order Request for Proposals (TORFP):

(a) To be used when a scope of work for services, supplies, or commodities requires master contractors to submit a proposal which is then evaluated for the best value to the State.

(b) A TORFP shall follow the provisions for Competitive Sealed Proposals and requests for proposals as set forth in COMAR 21.05.03, except for task order evaluation and award which shall follow COMAR 21.05.13.06.

(2) Purchase Order Request for Proposals (PORFP):

(a) To be used when specific services, supplies, or commodities are available at a fixed price, typically as defined in a catalog or price sheet of the master contract.

(b) A PORFP shall follow the provisions for Competitive Sealed Bidding and invitations for bids as set forth in COMAR 21.05.02, except for purchase order evaluation and award which shall follow COMAR 21.05.13.06.

(3) Request for Resumes (RFR):

(a) To be used when temporary personnel are required.

(b) A RFR requests master contractors to submit resumes for qualified candidates in response to a specific scope of work, with resumes evaluated, candidates interviewed, and selection made in accordance with COMAR 21.05.13.06.

C. The secondary competition solicitation shall include a statement of the factors that will be used in evaluating a master contractor's response and the relative importance of each factor.

D. The designated procurement unit that awarded the master contract may require the secondary competition solicitation to be reviewed and approved by that designated procurement unit prior to publication.

#### **.06 Secondary Competition Evaluation, and Awards.**

A. The procuring unit of the Executive Branch that has received responses from master contractors to a secondary competition solicitation shall evaluate the responses and may select a master contractor for award based on the response that is determined to be the most advantageous to the State considering the evaluation factors set forth in the secondary competition solicitation.

*B. If expressly permitted in the secondary competition solicitation, secondary competition awards may include renewal options, and awards may be made to more than one master contractor.*

*C. The total dollar amount of secondary competition awards to master contractors may not exceed the monetary ceiling value of the particular master contract from which the secondary competition was solicited.*

*D. Secondary competition awards to master contractors may not exceed the period of performance of the particular master contract from which the secondary competition was solicited unless the master contract is modified to be extended for a period of time to allow for a task order to continue beyond the term of the original master contract, and that period of time is no longer than one-third of the base term of the original master contract. No additional task orders may be issued after the master contract's original, unmodified end date.*

*E. A TORFP award by a unit of the Executive Branch shall include a performance evaluation procedure to be used by the unit to evaluate the performance of the master contractor that has completed work on the task order.*

*F. The designated procurement unit that awarded the master contract may require the secondary competition award recommendation to be reviewed and approved by that designated procurement unit prior to award.*

*G. Procurement agencies are required to report secondary competition awards over \$50,000 in eMaryland Marketplace.*

*H. If valued over \$200,000, a secondary competition award, renewal option, or modification shall be submitted to the Board of Public Works for review and approval, before execution, on the appropriate Action Agenda in accordance with COMAR 21.02.01.05.*

**.07 Construction Master Contract Exceptions**

*A. The requirements in .05A(1), .05A(2), .05C, and .06A of this Chapter do not apply to a master contract for construction that is procured and awarded under this Chapter and states how task orders will be awarded and the maximum number of qualified contractors that will be awarded a master contract for construction.*

END ALL NEW

## **Title 21 STATE PROCUREMENT REGULATIONS**

### **Subtitle 07 CONTRACT TERMS AND CONDITIONS**

#### **Chapter 01 Mandatory Contract Provisions – All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)**

Authority: Election Law Article, §§14-101—14-108; State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, [13-317,] 16-202, 17-401, 17-402, and 19-114; [State Government] *General Provisions* Article, §§5-101 and 5-503; Annotated Code of Maryland; *Chs. 588, 589, 630, Acts of 2017*

**.19 Financial Disclosure.**

Mandatory provision for all contracts:

"The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate [\$100,000] \$200,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches [\$100,000] \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business."

**.20 - .24 (text unchanged)**

**.25 Contract Affidavit.**

(text unchanged)

**CONTRACT AFFIDAVIT**

A. – B. (text unchanged)

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate [\$100,000] \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches [\$100,000] \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. – F. (text unchanged)

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 07 CONTRACT TERMS AND CONDITIONS

### Chapter 02 Mandatory Construction Contract Clauses

Authority: Election Law Article, §§14-101—14-108; State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, [13-317,] 16-202, 17-401,17-402, and 19-114; [State Government] *General Provisions* Article, §§5-101 and 5-503; Annotated Code of Maryland: *Chs. 588,589,630, Acts of 2017*

#### .10 Performance and Payment Bonds.

Mandatory provision for all construction contracts exceeding \$100,000:

A. Performance Bond. The required performance bond shall be in the form specified as follows:

#### PERFORMANCE BOND

Principal	Business Address of Principal
Surety a corporation of the State of _____ and authorized to do business in the State of Maryland	Obligee  STATE OF MARYLAND
Penal Sum of Bond (express in words and figures)	Date of Contract _____, 20____
Description of Contract	Date Bond Executed _____, 20____
Contract Number: _____	

KNOW ALL [MEN] BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture *have signed below, each member has set forth below the name of the partnership or joint venture*, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

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In Presence of: \_\_\_\_\_ Individual Principal  
 Witness: \_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

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In Presence of: \_\_\_\_\_ Co-Partnership Principal  
 Witness: \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ (Name of Co-Partnership)  
 \_\_\_\_\_ as to By: \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ as to \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

---

Attest: \_\_\_\_\_ Corporate Principal  
 \_\_\_\_\_ (Name of Corporation)  
 \_\_\_\_\_ as to By: \_\_\_\_\_ AFFIX  
 Corporate Secretary President CORPORATE  
 SEAL

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Attest: \_\_\_\_\_ (SEAL) \_\_\_\_\_ By: \_\_\_\_\_ SEAL  
 \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Bonding Agent's Name: \_\_\_\_\_  
 Agent's Address \_\_\_\_\_ (Business Address of Surety)

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Approved as to legal form and sufficiency this  
 \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
 \_\_\_\_\_  
 Asst. Attorney General

B. (text unchanged)

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 07 CONTRACT TERMS AND CONDITIONS

### Chapter 03 Mandatory Terms and Conditions for Purchase Orders Over [\$25,000] \$50,000

Authority: State Finance and Procurement Article, §§12-101, 13-217—13-219, 13-221, 16-202, 17-401, 17-402; Election Law Article, §§14-101—14-108; and [State Government] *General Provisions* Article, §§[15-502—15-503]5-502–5-503; Annotated Code of Maryland; *Ch. 630, Acts of 2017*

#### **.07 Financial Disclosure.**

"The Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate [\$100,000] \$200,000 or more during a calendar year shall, within 30 days of the time when the [\$100,000] \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business."

#### **.08 Political Contribution Disclosure.**

"The Contractor shall comply with [Election Law Article, §§14-101—14-108, Annotated Code of Maryland] *Md. Code Ann., Election Law Article, Title 14*, which requires that every person that enters into [contracts, leases, or other agreements] a *procurement contract* with the State [of Maryland], a *county*, a *municipal corporation*, or [a] *other* political subdivision of the State, [including its agencies,] during a calendar year in which the person receives a *contract with a governmental entity* in the [aggregate] *amount of* [\$100,000] \$200,000 or more, shall file with the State [Administration] Board of Elections [Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.] *statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html)."*

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES

### Chapter 03 Bid Protests Concerning Architectural Services and Engineering Services Contracts

Authority: State Finance and Procurement Article, §§12-101 [and 13-316], Annotated Code of Maryland; *Chs. 588, 589, Acts of 2017*

# Title 21 STATE PROCUREMENT REGULATIONS

## Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES

### Chapter 04 Contract Claims and Disputes

Authority: State Finance and Procurement Article, §§12-101 and 15-201—15-223, Annotated Code of Maryland

#### **.04 Disposition of Contractor Claim.**

A. – B. (text unchanged)

C. The contractor claim and recommended decision of the procurement officer shall be submitted for review to the reviewing authority and the Office of the Attorney General. *Unless the reviewing authority remands the proceeding with instructions to the procurement officer, t[T]he reviewing authority [may] shall approve, modify, or disapprove the recommended decision within 180 days after receiving the contract claim or a longer period if the parties agree.* In disapproving a recommended decision, the reviewing authority may order the procurement officer to effect a resolution of the claim.

D. Unless the contractor claim is remanded to the procurement officer, the decision of the reviewing authority, *including a decision not to pay a contract claim*, is the final action by the procurement agency and shall be furnished to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. *Failure to reach a decision within the time required under Section C of this Regulation may be deemed, at the option of the contractor, to be a decision not to pay the contract claim that may be appealed in accordance with Regulation .09 of this chapter.*

E. (text unchanged)

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 11 SOCIOECONOMIC POLICIES**

### **Chapter 01 Small Business Procurements**

Authority: State Finance and Procurement Article, §§12-101, 14-201—14-208, and 14-501—14-505, Annotated Code of Maryland; *Ch. 119, Acts of 2016*

#### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Certified small business" means a business, other than a nonprofit business, that:

(a) Is certified by the [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs* pursuant to regulations adopted by that Department; and

(b) Meets the criteria for a small business as defined under COMAR 21.01.02.01B(80).

[(2) "Designated procurement unit" means:

(a) The State Treasurer;

(b) The Department of Commerce;

(c) The Department of the Environment;

(d) The Department of General Services;

(e) The Department of Health and Mental Hygiene;

(f) The Department of Housing and Community Development;

(g) The Department of Human Resources;

(h) The Department of Information Technology;

(i) The Department of Juvenile Services;

(j) The Department of Labor, Licensing, and Regulation;

(k) The Department of Natural Resources;

(l) The State Department of Education;

(m) The Department of State Police;

(n) The Department of Public Safety and Correctional Services;

(o) The Department of Transportation;

(p) The University System of Maryland;

(q) The Maryland Port Commission;

(r) The State Retirement Agency;

(s) The Maryland Insurance Administration;

(t) The Maryland Stadium Authority;

(u) The State Lottery Agency;

(v) Morgan State University; and

(w) The Maryland Transportation Authority.]

[(3)] (2) "Disabled veteran" means a veteran who has been certified by the U.S. Department of Veterans Affairs as having a service-connected disability, regardless of the disability rating.

[(4)] (3) "Disabled-veteran-owned small business" means a small business as defined under COMAR 21.01.02.01B(80) that is at least 51 percent owned and controlled by one or more individuals who are disabled veterans.

[(5)] (4) "Veteran" means a veteran as defined in 38 U.S.C. §101(2) who is domiciled in Maryland.

[(6)] (5) "Veteran-owned small business" means a small business as defined under COMAR 21.01.02.01B(80) that is at least 51 percent owned and controlled by one or more individuals who are veterans.

#### **.02 - .03 (text unchanged)**

#### **.04 Small Business Eligibility/Certification.**

A. To be eligible to receive a small business price preference under the small business preference program, or to be eligible for award of a procurement under the small business reserve program, a business must be certified by the [Maryland Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs* as a small business in accordance with

regulations adopted by the [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs*. A business so certified shall be added to the certified small business list maintained by [that Department] *the Governor's Office of Small, Minority, and Women Business Affairs*. To maintain its certification as a small business, a business shall reapply for certification every year, not later than on the anniversary date of the initial certification.

B. Affidavit. Upon request of the [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs*, a business seeking certification or recertification as a small business shall execute and submit a Small Business Affidavit in the form prescribed under §D of this regulation.

C. Other information. The [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs* may, in its sole discretion, request any other information in support of the certification request.

D. – E. (text unchanged)

#### **.05 Small Business Preference Program.**

A. (text unchanged)

B. Procedures.

(1) – (2) (text unchanged)

(3) Direct Solicitation. When soliciting bids for a procurement designated for a small business preference, the procuring unit shall send a solicitation or notice of the solicitation to all certified small businesses for the subject of the contract contained on the [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs* Certified Small Businesses List. When soliciting bids under the small business preference program, others selected from the business community at large, including certified minority business enterprises, shall also be solicited.

(4) – (5) (text unchanged)

#### **.06 Small Business Reserve Program.**

A. Applicability.

(1) All procurements by [the designated] a procurement unit[s listed under Regulation .01A] are eligible for designation as small business reserve procurements.

(2) (text unchanged)

B. Scope. *To the extent practicable, e[E]ach [designated] procurement unit shall structure its procurement procedures to achieve the result that a minimum of [10] 15 percent of the unit's total dollar value of procurements for goods, supplies, services, maintenance, construction, construction-related services, architectural services, and engineering services are expended directly with certified small businesses at the prime contract level.*

C. Exclusion. For purposes of computing the [designated] procurement units total dollar value of procurements, exempt procurements under §A(2) of this regulation are excluded.

D. Expenditures [Plan.]

(1) Forecasts. Each [designated] procurement unit shall, based upon the approved budget and other applicable factors, annually prepare a fiscal year procurement expenditure forecast. The forecast shall project expected expenditures under procurements to be awarded or currently under contract, and the unit shall develop a plan allocating a minimum of 10 percent of the total expected expenditures under these contracts directly to certified small businesses.

(2) Included and Excluded Expenditures.

(a) Expenditures in a current fiscal year under a multiyear contract awarded in a prior fiscal year shall be included in the [designated] procurement unit's forecast and counted toward both total procurement dollars and small business reserve dollars, as applicable. This excludes expenditures under contracts awarded before October 1, 2004.

(b) [Expenditures to certified small businesses made under procurements not reserved for small business may be included towards attainment of the annual small business reserve amount] *Only those payments resulting from a procurement designated as a small business reserve procurement may be applied towards the procurement unit's overall small business reserve payment achievement.*

(c) Expenditures to certified small businesses *awarded under small business reserve procurements* may be included towards attainment of the small business reserve amount notwithstanding the procurement method used.

E. Solicitation Notice. Each solicitation for bids or proposals for a procurement designated for a small business reserve shall include the following notice:

NOTICE TO BIDDERS/OFFERORS

SMALL BUSINESS RESERVE PROCUREMENT

This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by the [Department of General Services] *Governor's Office of Small, Minority, and Women Business Affairs* Small Business Reserve Program are eligible for award of a contract.

For the purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

A. – D. (text unchanged)

[F] E. Ineligible Bids or Proposals. Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.

[G] F. Before awarding a contract under a contract designated as a small business reserve procurement, the procurement officer shall verify that the apparent awardee is certified by the Department of General Services as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been certified.

[H] G. Reporting. The [designated] procurement units shall submit a report on the Small Business Reserve Program annually as required under COMAR 21.13.01.03B.

[I] H. SBR Liaison Officer. The head of each [designated] procurement unit shall designate an employee to be the SBR liaison officer in the administration of that unit's small business reserve program. The SBR liaison officer shall be a high-level employee reporting directly to the agency head or head of the [designated] procurement unit. The SBR liaison officer shall be responsible for coordinating the procurement unit's outreach efforts to the small business community, reviewing the unit's contracting procedures to ensure compliance with small business reserve requirements, assisting in the resolution of small business reserve contracting issues, and submitting required small business reserve program reports or information.

## **Title 21 STATE PROCUREMENT REGULATIONS**

### **Subtitle 11 SOCIOECONOMIC POLICIES**

#### **Chapter 03 Minority Business Enterprise Policies**

Authority: State Finance and Procurement Article, §§12-101 and 14-301—14-308, Annotated Code of Maryland; Ch. 268, 283, 293, 328, and 715, Acts of 2009; Ch. 619, Acts of 2010; Chs. 252, 253, and 254, Acts of 2011; Ch. 154, Acts of 2012; *Chs. 340, 438, Acts of 2017*

##### **.10 Contract Award.**

A. (text unchanged)

B. Additional Documentation.

(1) – (2) (text unchanged)

(3) *Within 10 days after notice from the prime contractor of the State's intent to award a contract, each MBE serving as a subcontractor on the contract shall complete a document stating the percentage and type of work assigned to the subcontractor under the contract and submit copies of the completed form to both the procurement officer and the prime contractor.*

[(3)] (4) An affidavit shall be completed and signed by the prime contractor stating that, in the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors. If this affidavit is part of the utilization affidavit, it shall be submitted with the bid or proposal.

[(4)] (5) Other documentation considered appropriate by the procurement agency to ascertain bidder or offeror responsibility in connection with the contract MBE participation goal shall be furnished by the bidder or offeror.

[(5)] (6) If the MBE utilization affidavit and MBE participation schedule of the apparent successful bidder or offeror do not achieve the contract goal for MBE participation, the apparent successful bidder or offeror shall submit documentation supporting the waiver request that was included with the bid or proposal as provided in Regulation .11 of this chapter.

[(6)] (7) The contractor, by submitting the bid or offer, consents to provide that documentation requested by the designated department or procurement agency pursuant to COMAR 21.11.03.13, and to provide right of entry at any reasonable time for purposes of the State's representatives verifying compliance with the MBE subcontractor requirements.

C. – F. (text unchanged)

##### **.11 Waiver.**

A. – G. (text unchanged)

##### **.12 Amendment of MBE Participation Schedule.**

A. If at any time after submission of a bid or proposal and before execution of a contract, a bidder or offeror determines that a certified MBE listed on the MBE participation schedule required under Regulation .09C(3) of this chapter has become or will become unavailable or [is] ineligible to perform the work required under the contract, then the bidder or offeror [shall]:

(1) Within 72 hours of making the determination, *shall* provide written notice to the procurement officer; and

(2) Within 5 business days of making the determination, *may* make a written request to the procurement officer to amend the MBE participation schedule.

B. – D. (text unchanged)

E. Amendments to the MBE participation schedule occurring after the date of contract award.

(1) *For purposes of this regulation, "good cause" includes documented nonperformance by the certified MBE or election by the certified MBE to cease work on the contract. Failure of the certified MBE to provide a bond as requested by the contractor is not considered to be nonperformance by the certified MBE if the requested bond violates State Finance and Procurement Article, §13-227.*

[(1)] (2) A contractor may not terminate or otherwise cancel the contract of a certified MBE listed on the MBE participation schedule without:

(a) Showing good cause why the contract with the certified MBE should be terminated or cancelled;

(b) Obtaining the prior written consent of the MBE liaison;

(c) Obtaining approval of the head of the unit; and



(d) Subsequently amending the contract.

[(2)] (3) The procurement agency shall send a copy of the MBE liaison written consent to the Governor's Office of Small, Minority & Women Business Affairs.

**.12-1 Counting Minority Business Enterprise Participation.**

A. General. When a certified MBE participates in a contract, the procurement agency shall consider §§B, C, [and] D, *and E* of this regulation in determining whether and the extent to which the certified MBE's participation may be counted toward the MBE participation goals.

B. – D. (text unchanged)

*E. Counting Value of Supplies and Equipment*

(1) For purposes of this section, "regular dealer" means:

(a) A firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and

(b) Does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

(2) If the certified MBE is a regular dealer, then a procurement unit may apply only 60% of the costs of the materials and supplies provided by the regular dealer toward the MBE participation goal.

(3) If the certified MBE is neither a regular dealer nor a manufacturer, a procurement unit:

(a) May not count any portion of the costs of the materials and supplies toward the MBE participation goal; and

(b) May count the entire amount of the fees or commissions charged for assistance in procuring materials and supplies, fees, or transportation charges for delivering the materials and supplies required on a procurement toward the MBE participation goal if the procurement unit determines the fees:

(i) are reasonable; and

(ii) not excessive as compared with fees customarily allowed for similar services.

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 11 SOCIOECONOMIC POLICIES**

### **Chapter 05 Procurement from Maryland Correctional Enterprises, Blind Industries and Services of Maryland, and The Employment Works Program [Community Services Providers]**

Authority: State Finance and Procurement Article, §§12-101 and 14-101—14-108; Correctional Services Article, §3-515; Annotated Code of Maryland; *Ch. 415, Acts of 2015; Ch. 313, Acts of 2016*

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) – (3) (text unchanged)

(4) "Individual-with-disability-owned business" means a business:

(a) – (c) (text unchanged)

(d) Whose workforce includes individuals with disabilities comprising a percentage of the workforce that is at or above the minimum required under the policies or guidelines established by the [State] Pricing and Selection Committee for *Blind Industries and Services of Maryland* and the Employment Works Program;

(e) Whose total gross revenues for contracts assigned under the Employment Works Program at the time of assignment do not exceed the maximum allowed under policies or guidelines established by the [State] Pricing and Selection Committee for *Blind Industries and Services of Maryland* and the Employment Works Program; and

(f) That continues to meet all other eligibility criteria established by the [State] Pricing and Selection Committee for *Blind Industries and Services of Maryland* and the Employment Works Program.

(5) – (7) (text unchanged)

(8) "Pricing authority" means the Department of General Services[,] or the *Pricing and Selection Committee* for [the] *Blind Industries and Services of Maryland* [Pricing Committee, or the State Pricing and Selection Committee for] and the Employment Works Program.

(9) – (10) (text unchanged)

**.02 Scope.**

A. – F. (text unchanged)

**.03 Determining Fair Market Price.**

A. – C. (text unchanged)

**.04 Duties of Pricing Authorities.**

A. The Secretary of General Services or designee shall:

(1) – (6) (text unchanged)

B. The *Pricing and Selection Committee for Blind Industries and Services of Maryland and the Employment Works Program* [Pricing Committee] shall:

(1) (text unchanged)

(2) [Determine the current average market prices for services and supplies provided by Blind Industries and Services of Maryland;] *Ensure that supplies and services provided by Blind Industries and Services of Maryland or a community service provider create work opportunities for individuals who have a mental or physical disability, including blindness, for which Blind Industries and Services of Maryland or the community service provider was established to assist;*

(3) *Choose appropriate supplies and services for community service providers and individual with disability owned businesses to offer for procurement;*

[(4) Transmit periodically to the Secretary of General Services for inclusion in the master list:

(a) A listing of those services and supplies available for procurement from Blind Industries and Services of Maryland,

(b) The fair market price for each service and supply, and

(c) Any necessary instructions governing the procurement of a service or supply from Blind Industries and Services of Maryland.]

(4) Except for services and supplies provided under the Maryland Blind Vending Program, [determine the fair market prices for services and supplies provided by Blind Industries and Services of Maryland; and;] *set prices to reflect the fair market prices of supplies and services that Blind Industries and Services of Maryland, community service providers and individual-with-disability-owned businesses provide;*

(5) *Adjust prices for the supplies and services that Blind Industries and Services of Maryland, community service providers and individual-with-disability-owned businesses provide, in accordance with market conditions;*

(6) *At the request of a community service provider or an individual-with-disability-owned business, review and, if appropriate, change the price of a supply or service;*

(7) *Establish and periodically review eligibility policies or guidelines for participating community service providers and individual-with-disability-owned businesses;*

(8) *Maintain a current list of community service providers and individual-with-disability-owned businesses;*

(9) *Periodically review and revise the list of community service providers and individual-with-disability-owned businesses, and send any revised list to the Secretary of General Services who shall make the list available to each person responsible for buying supplies or services for the State or a State aided or controlled entity;*

(10) *Maintain current lists of supplies and services that Blind Industries and Services of Maryland, community service providers and individual-with-disability-owned businesses provide;*

(11) *Periodically review and revise the lists of supplies and services maintained in accordance with item (10) of this section, and send any revised list to the Secretary of General Services who shall make the lists available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.*

[C. The State Pricing and Selection Committee for the Employment Works Program shall:

(1) Meet as often as necessary, at the call of any of its members, but at least annually;

(2) Determine the fair market prices for services and supplies provided by community service providers or individual-with-disability-owned businesses;

(3) Transmit periodically to the Secretary of General Services for inclusion in the master list:

(a) A listing of those services and supplies available for procurement from community service providers or individual-with-disability-owned businesses;

(b) The fair market price for each service and supply contract award when specifications have been made available by the procurement agency,

(c) Any necessary instructions governing the procurement of a service or supply from a community service provider or individual-with-disability-owned business; and

(d) A list of community service providers and individual-with-disability-owned businesses;

(4) Recommend the types of services and supplies to be made available for procurement from community service providers or individuals-with-disability-owned businesses in accordance with this chapter;

(5) Establish and periodically review eligibility policies or guidelines for participating community service providers and individual-with-disability-owned businesses;

(6) Maintain a current list of community service providers and individual-with-disability-owned businesses; and

(7) Periodically review and revise the list of community service providers and individual-with-disability-owned businesses.]

**.05 Coordination.**

(text unchanged)

**.06 Responsibilities of Selling Entities.**

(text unchanged)

**.07 Responsibilities of Procurement Agencies.**

- A. – B. (text unchanged)
- C. Supplies and Services.
  - (1) (text unchanged)
  - (2) If a supply or service is listed as available from more than one selling entity and no ordering priority is otherwise specified in the master list, the procurement agency shall, subject to §C(3) of this regulation, obtain that supply or service from a selling entity in accordance with the following order of priority:
    - (a) Maryland Correctional Enterprises;
    - (b) Blind Industries and Services of Maryland;
    - (c) [A community service provider;] *the Employment Works Program*
    - [(d) An individual-with-disability-owned business.]
  - (3) – (4) (text unchanged)
- D. – F. (text unchanged)

## Title 21 STATE PROCUREMENT REGULATIONS

### Subtitle 11 SOCIOECONOMIC POLICIES

#### Chapter 13 Veteran-Owned Small Business Enterprises

Authority: State Finance and Procurement Article, §§14-601—14-605; Chs. 343 and 344, *Acts of 2015* [507 and 508, Acts of 2010]

##### **.01 General — Purpose.**

(text unchanged)

A. Each procurement agency shall structure its procedures for making procurements to try to achieve an overall minimum of [0.5] *one* percent of the unit's total dollar value of all procurement contracts made directly or indirectly with veteran-owned small business enterprises; and

B. (text unchanged)

## Title 21 STATE PROCUREMENT REGULATIONS

### Subtitle 13 PROCUREMENT REPORTING REQUIREMENTS

#### Chapter 01 Reporting Requirements

Authority: *Election Law Article §14-101, 14-107*; State Finance and Procurement Article, §§12-101, 13-207, 14-208, 14-305, 14-505, 15-110, 15-111, and 17-104, Annotated Code of Maryland

##### **.17 State Board of Elections Report**

A. *For purposes of this regulation, “Doing public business” means making or having a single contract with a single governmental entity involving cumulative consideration of at least \$200,000. “Doing public business” does not include receiving a salary from a governmental entity.*

B. *Each governmental entity shall prepare and submit a quarterly report to the State Board of Elections within 10 Business Days following the close of each calendar quarter on a form provided by the State Board of Elections, pursuant to Election Law Article §14-107. The report shall include the required information for any person that was awarded a contract that caused the person to be doing public business with the governmental entity during the preceding calendar quarter.*