

# Title 21

## STATE PROCUREMENT REGULATIONS

### Subtitle 01 GENERAL PROVISIONS

#### Notice of Proposed Action

[26-029-P]

The Board of Public Works proposes to:

- (1) Amend Regulation .01 under COMAR 21.01.01 Authority, Policies, and Purposes;
- (2) Amend Regulation .01 under COMAR 21.01.02 Terminology;
- (3) Amend Regulations .01 and .01-1 under COMAR 21.01.03 Applicability;
- (4) Amend Regulations .04 and .05 under COMAR 21.02.01 Board of Public Works;
- (5) Amend Regulation .01 under COMAR 21.05.01 General Provisions;
- (6) Amend Regulations .04, .07, and .16 under COMAR 21.05.02 Procurement by Competitive Sealed Bidding;
- (7) Amend Regulation .03 under COMAR 21.05.03 Procurement by Competitive Sealed Proposals;
- (8) Amend Regulations .01—.03 under COMAR 21.05.06 Emergency and Expedited Procurements;
- (9) Amend Regulations .01, .03, .04, and .05 under COMAR 21.05.07 Small Procurement Regulations;
- (10) Amend Regulation .02 under COMAR 21.05.08 Mandatory Written Solicitation Requirements;
- (11) Amend Regulation .05 under COMAR 21.05.09 Intergovernmental Cooperative Purchasing;
- (12) Amend Regulation .05 under COMAR 21.05.10 Construction Management at Risk;
- (13) Amend Regulations .03 and .04 under COMAR 21.05.12 Procurement of Human, Social, Cultural, and Educational Services;
- (14) Amend Regulations .01, .03, .05, .06, and .07, and adopt new Regulation .08 under COMAR 21.05.13 Master Contracting;
- (15) Repeal existing Regulations .01—.05 and adopt new Regulations .01—.03 under COMAR 21.05.15 Legislative Fast-Track Procurement;
- (16) Amend Regulations .01, .09, and .10 under COMAR 21.06.07 Bid and Contract Security/Bonds;
- (17) Amend Regulation .05 under COMAR 21.06.09 Invoicing, Payment, and Interest on Late Payments;
- (18) Adopt new Regulations .01—.05 under a new chapter, COMAR 21.06.10 Pay for Success Contracting;
- (19) Amend Regulations .18, .19, .24, .27, and .28 under COMAR 21.07.01 Mandatory Contract Provisions—All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03);
- (20) Amend Regulations .05-1, .10 and .11 under COMAR 21.07.02 Mandatory Construction Contract Clauses;
- (21) Amend Regulation .02 under COMAR 21.07.04 Prohibited Provisions;
- (22) Amend Regulation .04 under COMAR 21.10.04 Contract Claims and Disputes;
- (23) Amend Regulations .01 and .06 under COMAR 21.11.01 Small Business Procurements;
- (24) Amend Regulations .01, .03, .04, .07, .08, .09, .11, .12, .13, .15, and .17 under COMAR 21.11.03 Minority Business Enterprise Policies;
- (25) Amend Regulations .01, .06, and .07 under COMAR 21.11.05 Procurement from Maryland Correctional Enterprises, Blind Industries and Services of Maryland, and the Employment Works Program;
- (26) Amend Regulations .08 and .11 under COMAR 21.11.07 Miscellaneous Purchasing Preferences;
- (27) Amend Regulations .03 and .04 under COMAR 21.11.12 State Apprenticeship Training Fund;
- (28) Amend Regulation .05 under COMAR 21.12.02 Department of Transportation and Department of General Services; A/E Services Exceeding \$200,000; and
- (29) Amend Regulations .02, .03, and .15 under COMAR 21.13.01 Reporting Requirements.

#### Statement of Purpose

The purpose of this action is to amend, repeal and add regulations in COMAR Title 21 to implement enacted legislation and revise the same for purposes of clarification and internal consistency.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Rachel Hershey, General Counsel, Board of Public Works, 80 Calvert St., Suite 117, Annapolis, MD 21401, or call 410-260-7335, or email to [rachel.hershey3@maryland.gov](mailto:rachel.hershey3@maryland.gov). Comments will be accepted through May 18, 2026. A public hearing has not been scheduled.

### 21.01.01 Authority, Policies, and Purposes

Authority: State Finance and Procurement Article, §§11-201, 12-101, 12-108, 14-604, 15-210, and 17-204, Annotated Code of Maryland; Ch. 601, Acts of 2025

#### .01 Promulgating Authorities.

A. The promulgating authorities for the State procurement regulations are: the Board of Public Works (the Governor, Comptroller, and Treasurer); the Comptroller of the Treasury; the State Treasurer; [and] the [Secretaries] *Secretary of General Services and Chief Procurement Officer; and the Secretary of Transportation.*

B.—C. (text unchanged)

D. Regulations concerning *certified small business eligibility, small business preference program, and veteran-owned small business enterprise participation* shall be promulgated by the [Governor's] Office of Small, Minority, and Women Business Affairs.

### 21.01.02 Terminology

Authority: State Finance and Procurement Article, §§3.5-301, 11-101, 12-101, 13-101 and 13-108, Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(47) (text unchanged)

(47-1) “Information technology” [means all electronic information processing, including:

(a) Maintenance;

(b) Telecommunications;

(c) Hardware;

(d) Software; and

(e) Associated services] *has the meaning stated in State Finance and Procurement Article, §3.5-301, Annotated Code of Maryland.*

(48)—(78) (text unchanged)

(79) Services.

(a) “Services” means the rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to, the professional, personal, and/or contractual services provided by attorneys, accountants, physicians, consultants, and other professionals who are independent contractors, *information technology services, and cybersecurity services.*

(b) (text unchanged)

(80)—(82) (text unchanged)

(83) “Solicitation” means invitation for bids, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a procurement agency's procurement needs. *For the purpose of clarity, every procurement, regardless of procurement method, employs a solicitation.*

(84) (text unchanged)

(84-1) “*Statewide Contract*” means a contract that has been procured by a primary procurement unit to be used by all units or any entity listed in State Finance and Procurement Article, §4-316, Annotated Code of Maryland.

[(84-1)] (84-2)—(86) (text unchanged)

(87) Supplies.

(a) “Supplies” means all tangible personal property, including equipment, [and] leases of equipment, *information technology hardware, and printing; information technology software; insurance; and [including] necessarily associated services.*

(b) (text unchanged)

(88)—(99) (text unchanged)

### 21.01.03 Applicability

Authority: Natural Resources Article, §3-103; State Finance and Procurement Article, §§11-201—11-203, 12-101, 12-104, and 17-502; *Economic Development Article, §10-207*, 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; Ch. 273, Acts of 2019; *Ch. 736, Acts of 2025*

#### .01 Exemptions.

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

(1)—(17) (text unchanged)

(18) The Maryland Food Center Authority to the extent the Authority is exempt under [Article 41, Title 13, Subtitle 1, Annotated Code of Maryland] *Economic Development Article, Title 10, Subtitle 2, Annotated Code of Maryland.*

(19)—(24) (text unchanged)

(25) The Maryland Stadium Authority except as provided by State Finance and Procurement Article, Title 14, Subtitles 3 [and], 5, and 8, Annotated Code of Maryland, COMAR 21.11.03 and 21.11.01.06;

(26)—(36) (text unchanged)

B.—D. (text unchanged)

#### **.01-1 Public Universities and Colleges.**

A. (text unchanged)

B. Applicable provisions of State Finance and Procurement Article, Annotated of Maryland.

(1)—(2) (text unchanged)

(3) *State Finance and Procurement Article, Title 14, Subtitle 8, Annotated Code of Maryland (Employee Stock Ownership Plan Preference Program) applies to St. Mary's College of Maryland, Morgan State University, and Baltimore City Community College.*

C.—E. (text unchanged)

## **Subtitle 02 STATE PROCUREMENT ORGANIZATION**

### **21.02.01 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, 12-301, 12-302, 13-108, and 15-112; Annotated Code of Maryland

#### **.04 Delegation of Procurement and Contracting Authority.**

A. Notwithstanding the following delegations in [§B of] this regulation, a contract funded with general obligation bond proceeds must be approved by the Board regardless of amount in accordance with State Finance and Procurement Article, §8-301, Annotated Code of Maryland.

B. The Department of General Services. The Board hereby delegates authority to the Secretary of General Services for the approval and award of the following procurement contracts within the Department's jurisdiction:

(1) Except for insurance, insurance related, banking, investment, and financial services, the following contracts, contract actions, and awards: [Capital construction contracts, construction-related services contracts, information technology contracts, including contracts for information processing equipment, cloud computing equipment and associated services, information technology system modernization, as provided in State Finance and Procurement Article, Title 3.5, Subtitle 3, Annotated Code of Maryland, telecommunication equipment systems or services as provided in State Finance and Procurement Article, Title 3.5, Subtitle 4, Annotated Code of Maryland, services contracts, architectural and engineering contracts, maintenance contracts, contracts for rental vehicles supplied to using agencies in accordance with COMAR 21.02.05.08, secondary competition awards, renewal options, and modifications in accordance with COMAR 21.05.13.06, capital construction change orders, capital construction-related service change orders, information processing equipment and associated services change orders, cloud computing services change orders, and information technology system and cybersecurity upgrades change orders in accordance with State Finance and Procurement Article, Title 3.5, Subtitle 3, in the amount of \$200,000 or less.]

(a) *Capital construction contracts, construction-related services contracts, information technology contracts, including contracts for information technology system and cybersecurity upgrades modernization, as provided in State Finance and Procurement Article, Title 3.5, Subtitle 3, Annotated Code of Maryland, telecommunication systems or services as provided in State Finance and Procurement Article, Title 3.5, Subtitle 4, Annotated Code of Maryland, other services contracts, architectural and engineering contracts, maintenance contracts, contracts for rental vehicles supplied to using agencies in accordance with COMAR 21.02.05.08, in the amount of \$500,000 or less, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(b) *Secondary competition awards, renewal options, and modifications in accordance with COMAR 21.05.13.06, in the amount of \$500,000 or less, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000; and*

(c) *Capital construction change orders, capital construction-related service change orders, information processing services change orders, cloud computing services change orders, and information technology system and cybersecurity upgrades change orders in accordance with State Finance and Procurement Article, Title 3.5, Subtitle 3, in the amount of \$500,000 or less, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(2) All contracts for the purchase of commodities (or supplies, except [as provided in §B(3) of this regulation and except for insurance and insurance-related services.] *the following:*

(a) *Contracts for information technology supplies in the amount of more than \$500,000, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(b) *Contracts as provided in §B(3) of this regulation; and*

(c) *Insurance and insurance-related services;*

(3) Contracts or Leases that Include Any Single Item of *Commodity, Supply, or Equipment* That [is] *Has a Unit Price of* [\$200,000] \$500,000 or Less. Contracts or leases [including] *that include any single item of commodity, supply, or equipment that [is] individually has a unit price of more than* [\$200,000] \$500,000 must be approved by the Board, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$200,000.*

(4) (text unchanged)

(5) Contract modifications, excluding construction contract change orders, that:

(a) (text unchanged)

(b) Individually do not change the amount of the contract, or any cost component of the contract, by more than [\$50,000] \$100,000, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$50,000;* or

(c) Exercise by a using agency a contract option of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(6) Contracts in the amount of [\$100,000] \$200,000 or less resulting from sole source procurement, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$100,000;*

(7) Contracts in the amount of [\$50,000] \$200,000 or less resulting from competitive sealed bidding or competitive sealed proposals procurements in which only one bid or offer was received, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$50,000;*

(8)—(11) (text unchanged)

C. The Department of Transportation.

(1) The Board hereby delegates authority to the Secretary of Transportation and to the Maryland Transportation Authority for the approval and award of the following procurement contracts within their respective jurisdictions:

(a) Transportation-related construction contracts and change orders in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(b) Capital construction-related service contracts and change orders in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(c) Architectural and engineering contracts in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(d) Maintenance contracts in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(e) All contracts for transportation-related commodities and supplies, including equipment contracts, and leases, but excluding [equipment contracts and leases including any single item of equipment that is more than \$200,000;] *the following:*

(i) *Insurance and insurance-related services;*

(ii) *Information technology supplies that are subject to State Finance and Procurement Article, §3.5, Annotated Code of Maryland in the amount of \$500,000 or more, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subparagraph will be \$200,000; and*

(iii) *Commodity, supply, or equipment contracts and leases that include any single item of commodity, supply, or equipment that individually has a unit price of more than \$500,000, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subparagraph will be \$200,000;*

(f) Contract modifications, excluding construction contract change orders, that:

(i) (text unchanged)

(ii) Individually do not change the amount of the contract, or any cost component of the contract, by more than [\$50,000] \$100,000, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subparagraph will be \$50,000;* or

(iii) Exercise a contract option of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subparagraph will be \$200,000;*

(g) Contracts in the amount of [\$100,000] \$200,000 or less resulting from sole source procurement, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$100,000.*

(h) Contracts in the amount of [\$50,000] \$200,000 or less resulting from competitive sealed bidding or competitive sealed proposals procurements in which only one bid or offer was received, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$50,000;*

(i) All procurements for aeronautics related services, commodities and supplies, including equipment contracts and leases, but excluding banking, insurance, insurance-related, investment, and financial services; [and]

(j) Secondary competition awards, renewal options, and modifications in accordance with COMAR 21.05.13.06 in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000[.]; and*

(k) *Services for transportation-related activities including information technology services that are subject to Title 3.5 of this article, but excluding banking, insurance-related, investment, and financial services, in amount of [\$200,000] \$500,000 or less, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000.*

(2) (text unchanged)

D.—E. (text unchanged)

F. Maryland Port Commission. The Board hereby delegates authority to the Chairman of the Maryland Port Commission for the approval and award of the following procurement contracts within the Maryland Port Commission's jurisdiction:

(1) Construction contracts and change orders for Port facilities in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions in this subsection will be \$200,000;*

(2) Construction-related service contracts and change orders for Port facilities in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions in this subsection will be \$200,000;*

(3) Port-related architectural services and engineering services contracts in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions in this subsection will be \$200,000;*

(4) Port-related maintenance contracts in the amount of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions in this subsection will be \$200,000;*

(5) Except as provided in §F(6) of this regulation, contracts for the purchase of commodities and supplies, including motor vehicles [and information technology supplies, but excluding insurance and insurance-related services];

(6) Contracts or leases within the procurement authority of the Maryland Port Commission that include [any single item of equipment, that has a per unit price of \$200,000 or less. Contracts or leases that include any single item of equipment, that is more than \$200,000 must be approved by the Board.] *the following are not delegated:*

(a) *Any single item of commodity, supply, or equipment, that individually has a per unit price of more than \$500,000, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000;*

(b) *Information technology supplies in an amount of more than \$500,000, except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000; and*

(c) *Insurance and insurance related services;*

(7) Contract modifications, excluding construction contract change orders, that:

(a) (text unchanged)

(b) Individually do not change the amount of a contract, or any cost component of the contract, by more than [\$50,000] \$100,000, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$50,000;*

(c) Exercise a contract option of [\$200,000] \$500,000 or less, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$200,000; or*

(d) Change cargo and equipment handling rates in stevedoring or terminal services contracts approved by the Board when the contract modification, either individually or in combination with previous contract modifications, does not change the price of the original contract by more than 20 percent[.];

(8) Service contracts for the Maryland Port Administration in the amount of [\$200,000] \$500,000 or less, including information technology services, but excluding banking, insurance, insurance-related, investment, and financial services[;], *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$200,000;*

(9) Contracts in the amount of [\$100,000] \$200,000 or less resulting from sole source procurement, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$100,000;*

(10) Contracts in the amount of [\$50,000] \$200,000 or less resulting from competitive sealed bidding or competitive sealed proposals procurements in which only one bid or offer was received, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$50,000; and*

(11) Leases of real property for Port-related activities having a value of [\$50,000] \$100,000 or less per year, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this subsection will be \$50,000, and provided the lease payments, in whole or in part, are not paid from the General Fund. (The real property leases governed by this regulation shall be reported to the Board on the Maryland Port Commission Procurement Agency Activity Report (PAAR) at the earliest practicable time.)*

G.—I. (text unchanged)

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

A. Action Agendas.

(1)—(2) (text unchanged)

(3) The procurement agencies shall *do the following*[:].

(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 [\$50,000] *the applicable small procurement amount listed in COMAR 21.05.07.01.* Each procurement agency shall be responsible for defending its own emergency procurements to the Board.

(b) (text unchanged)

(4)—(7) (text unchanged)

B. Procurement Agency Activity Reports (PAAR).

(1) The Departments shall prepare and submit to the Board Procurement Agency Activity Reports (PAAR) covering all procurement contracts in excess of [\$50,000,] *the applicable small procurement amount listed in COMAR 21.05.07.01, including*

information technology supplies but excluding other [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 [\$50,000] \$100,000, but less than the amount requiring Board approval, approved by the departments pursuant to this chapter, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$50,000;*

(b) All cancellations of solicitations or rejections of all bids or proposals approved by the departments pursuant to COMAR 21.06.02; [and]

(c) All construction contract change orders greater than [\$50,000] \$100,000, but less than the amount requiring Board approval, approved by the Departments of General Services and Transportation and the Maryland Port Commission pursuant to this chapter, *except that, as of December 31, 2030, the delegated amount for the procurement actions subject to this paragraph will be \$50,000; and*

(d) *All contracts for park system critical maintenance greater than the applicable small procurement amount listed in COMAR 21.05.07.01, but less than the amount requiring Board approval, either as reported to for the purposes of inclusion on the PAAR, but not approved by, the Department of General Services, in accordance with Natural Resources Article, §5-220, Annotated Code of Maryland or as approved by the Department of General Services in accordance with COMAR 21.01.02.04B.*

(3)—(5) (text unchanged)

(6) *The Board may direct the procurement agency or the appropriate control agency to take any action the Board deems appropriate concerning a procurement action reported on a PAAR.*

C. (text unchanged)

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

### **21.05.01 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; Chs. 633 and 624, Acts of 2018; Ch. 356, Acts of 2019; *Chs. 601 and 625, Acts of 2025*

#### **.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.—J. (text unchanged)

K. [Pay-for-success contracting] *Legislative Fast-Track procurements* under COMAR 21.05.15.

### **21.05.02 Procurement by Competitive Sealed Bidding**

Authority: State Finance and Procurement Article, §§12-101, 13-103, 13-210, and 14-301—14-308, Annotated Code of Maryland; Chs. 586 and 587, Acts of 2017; *Ch. 601, Acts of 2025.*

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

A. (text unchanged)

B. Publication. Notice of an invitation for bids for which the bid amount is reasonably expected to exceed [\$50,000] *the applicable small procurement amount listed in COMAR 21.05.07.01* 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.

#### **.07 Pre-Bid Conferences.**

A.—D. (text unchanged)

E. Pre-Bid Conference Records.

(1) When a pre-bid conference is held in connection with a procurement that is expected to exceed [\$100,000] *the applicable small procurement amount set forth in COMAR 21.05.07.01*, 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 bidders who were sent an invitation for bids or who are known by the procurement officer to have obtained the solicitation.

(2)—(4) (text unchanged)

F. (text unchanged)

#### **.16 Publicizing Awards.**

Written notice of award shall be sent to the successful bidder. Notice of award shall be made available to the public. Notices of award of all contracts *in excess of the applicable small procurement amount set forth in COMAR 21.05.07.01* awarded

pursuant to this chapter shall be published in eMaryland Marketplace by the procurement agency not more than 30 days after the execution and approval of the contract.

### **21.05.03 Procurement by Competitive Sealed Proposals**

Authority: State Finance and Procurement Article, §§12-101, 13-104, and 13-105, Annotated Code of Maryland; *Ch. 601, Acts of 2025*

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

A.—B. (text unchanged)

C. Discussions.

(1)—(2) (text unchanged)

(3) Conduct of Discussions.

(a)—(b) (text unchanged)

(c) *Except as provided in §D of this regulation, an oral presentation is required when:*

(i) *The total value of the contract is expected to exceed \$10,000,000 for construction and construction related services; or*

(ii) *For any other procurement, including information technology and professional services, the total value of the contract is expected to exceed \$5,000,000.*

(d) *If the procurement officer makes a written determination that oral presentations are unlikely to aid in the evaluation process, oral presentations are not required.*

D.—F. (text unchanged)

G. Notice of Award. After a contract *valued in excess of the applicable small procurement amount set forth in COMAR 21.05.07.01* is entered into *pursuant to this chapter*, the procurement agency shall publish notice of its award in eMaryland Marketplace not more than 30 days after the execution and approval of the contract.

### **21.05.06 Emergency and Expedited Procurements**

Authority: Public Safety Article, §14-117; 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, information technology, leases, construction, or construction-related services [in excess of \$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. Expedited Procurement. Regulation .03 of this chapter is established for procurement of supplies, services, maintenance, commodities, information technology, leases, construction, or construction-related services [in excess of \$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.

#### **.02 Emergency Procurements.**

A.—C. (text unchanged)

D. Record and Review of Emergency Procurement.

(1)—(2) (text unchanged)

(3) *Section D(3) of this regulation applies only to emergency procurement exceeding the applicable small procurement amount in COMAR 21.05.07.01. An action agenda item, including the information required by §D(2) of this regulation, and a procurement officer's determination stating the need for the emergency procurement per §B(1) of this regulation and signed by the agency head or designee in accordance with §B(2) of this regulation and Chief Procurement Officer or designee under the conditions specified in §B(3) of this regulation, shall be forwarded by the procurement agency to the Board and to the appropriate control agency within 15 days of emergency contract award or emergency modification in accordance with COMAR 21.02.01.05A(3)(a).*

(4)—(6) (text unchanged)

E.—F. (text unchanged)

#### **.03 Expedited Procurements.**

A.—E. (text unchanged)

F. *The Board may direct the procurement agency or the appropriate control agency to take any action the Board deems appropriate concerning an expedited procurement.*

### **21.05.07 Small Procurement Regulations [(\$100,000 or Less)]**

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined

(1)—(3) (text unchanged)

(4) “Small procurement” *has the meaning specified in State Finance and Procurement Article § 13-109, Annotated Code of Maryland and [means the use of] uses the procedures set forth in this chapter to:*

(a)—(b) (text unchanged)

(c) With respect to the State Retirement Agency for purposes of administering *State Personnel and Pensions Article, Title 29, Subtitle 1, Annotated Code of Maryland [of the State Personnel and Pensions Article]*, spend \$100,000 or less during a fiscal year for:

(i)—(ii) (text unchanged)

(d) With respect to the Department of Natural Resources, procure contracts for capital projects or maintenance with a value of \$200,000 or less; [or]

(e) With respect to the Department of General Services or Department of Transportation, procure construction with a value of \$200,000 or less[.]; *or*

(f) *In the event of a conflict between the small procurement amounts listed in §B(4)(a)—(e) of this regulation and State Finance and Procurement Article, §13-109, Annotated Code of Maryland, the amounts listed in State Finance and Procurement Article, §13-109, Annotated Code of Maryland shall govern.*

(5) (text unchanged)

**.03 Application.**

A. Use of the small procurement method described in this chapter shall be based on an initial decision by the procurement officer that the procurement satisfies the definition set forth in Regulation [.01B(6)] *.01B(4)* of this chapter.

B. (text unchanged)

C. *If a primary procurement unit determines that a using agency does not adhere to the established small procurement regulations, the primary procurement unit may limit or revoke a using agency’s ability to conduct small procurements.*

**.04 Categories.**

Small procurements are classified in three categories:

A. (text unchanged)

B. Category II Small Procurements — More than \$5,000 but not more than [\$50,000] *\$100,000*; and

C. Category III Small Procurements — More than [\$50,000] *\$100,000* but not more than [\$100,000] *\$200,000* [and, if] *for a procurement for capital projects or maintenance by the Department of Natural Resources or a construction procurement by the Department of General Services or Department of Transportation [, not more than \$200,000].*

**.05 Prohibitions.**

A. (text unchanged)

B. A procurement contract of more than [\$100,000] *the applicable small procurement amount listed in COMAR 21.05.07.01* 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 \$200,000 or less] *not more than the applicable small procurement amount listed in COMAR 21.05.07.01*; or

(3) The Department of Natural Resources procures capital projects of maintenance valued [at \$200,000 or less] *not more than the applicable small procurement amount listed in COMAR 21.05.07.01.*

## **21.05.08 Mandatory Written Solicitation Requirements**

Authority: Election Law Article, §§14-101—14-108; State Finance and Procurement Article, §§3-412, 3.5-311, 11-206, 12-101, 13-207, 13-218, 13-221, 14-303, 14-308, 14-406, 16-102, 16-202, 16-203, 17-401—17-402, and Title 19; Annotated Code of Maryland; Ch. 293, Acts of 2009; *Ch. 601, Acts of 2025*

**.02 Bid Bond Notice.**

A. Solicitations for construction contracts reasonably expected by the procurement officer to exceed [\$100,000] *the applicable small procurement amount listed in COMAR 21.05.07.01* shall contain notice of bid security requirements (See COMAR 21.06.07).

B. Solicitations for all other contracts reasonably expected by the procurement officer to exceed [\$50,000] *the applicable small procurement amount listed in COMAR 21.05.07.01* and for which the procurement officer wishes to require bid security shall contain notice of the bid security requirements.

C. Notwithstanding §§A and B of this regulation, notice of bid security is required if a federal law or a condition of federal assistance for the contract requires it.

## 21.05.09 Intergovernmental Cooperative Purchasing

Authority: State Finance and Procurement Article, §§12-101, 13-102, 13-110, and 14-303, Annotated Code of Maryland; Ch. 774, Acts of 2017; Ch. 601, Acts of 2025

### .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 or designee, *or the Department of General Services Chief Procurement officer or designee*, and any other approvals as required under this title.

## 21.05.10 Construction Management at Risk

Authority: State Finance and Procurement Article, §§12-101 and 13-103—13-104, Annotated Code of Maryland; Ch. 601, Acts of 2025

### .05 Trade Contracts.

A.—B. (text unchanged)

C. The construction manager or procurement unit shall send the solicitation notice for trade proposals to the [Governor's] Office of Small, Minority & Women Business Affairs and publish the notice in a newspaper of general circulation near the project, or Internet media, or both, at least 14 days before trade proposals are due. If the construction manager restricts trade proposals to prequalified contractors, the solicitation notice shall include information on the prequalification process.

D.—F. (text unchanged)

## 21.05.12 Procurement of Human, Social, Cultural, and Educational Services

Authority: State Finance and Procurement Article, §§12-101, 13-102, 13-104, 13-106, 13-108, and 13-109, Annotated Code of Maryland

### .03 Procurement Methods.

A.—B. (text unchanged)

C. Human, social, cultural, and educational services of [\$50,000] *the applicable small procurement amount specified in COMAR 21.05.07.01* or less may be procured in accordance with the small procurement method, COMAR 21.05.07.

D.—F. (text unchanged)

### .04 Noncompetitive Negotiated Procurement of Human, Social, or Educational Services.

A. (text unchanged)

B. The noncompetitive negotiated procurement method may be used if:

(1) The procurement officer, with the approval of the agency head *or designee* determines that two or more sources for the services are available but that, because of the absence of effective competition, it is unreasonable to expect those sources to respond to an invitation for bids under COMAR 21.05.02 or request for proposals under COMAR 21.05.03.

(2) (text unchanged)

C. Public Notice.

(1)—(2) (text unchanged)

(3) If the procurement agency expects that any contract may exceed [\$25,000] *\$100,000*, the request for general expressions of interest shall so state and shall be published in eMaryland Marketplace.

D.—F. (text unchanged)

## 21.05.13 Master Contracting

Authority: State Finance and Procurement Article, §§12-101, 13-101, 13-102, 13-113, 13-114, and 14-303, Annotated Code of Maryland; Ch. 601, Acts of 2025

### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(6) (text unchanged)

(7) "*Secondary competition award*" has the meaning stated in State Finance and Procurement Article, §13-101(i), Annotated Code of Maryland, and must be one of the types listed in COMAR 21.05.13.05.B.

### .03 Solicitations for Awarding Master Contractor Agreements.

A.—C. (text unchanged)

D. Pre-Proposal Conferences

(1)—(4) (text unchanged)

(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 applicable small procurement amount listed in COMAR 21.05.07.01*, 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)—(d) (text unchanged)

E.—G. (text unchanged)

#### **.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 within that master contract, as follows:

(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] *\$500,000*, the unit shall issue the secondary competition solicitation to all master contractors in the appropriate category in the master contract established by the designated procurement unit; or

(2) If the unit of the Executive Branch expects the total cost of the services, supplies, or commodities in the secondary competition to [be] *exceed \$100,000 [or less] but will not exceed \$500,000*, the unit shall issue the secondary competition solicitation to a minimum of six master contractors *on a rotating basis for master contracts designated by the Chief Procurement Officer* or all master contractors, whichever is less, in the appropriate category in the master contract 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.]

(3) *If the unit of the Executive Branch expects that the total cost of the services, supplies, or commodities to be procured by the secondary competition solicitation to be \$100,000 or less, the unit shall issue a secondary competition solicitation for a secondary competition award to a minimum of three master contractors on a rotating basis for master contracts designated by the Chief Procurement Officer or all master contractors, whichever is less, in the appropriate category of the master contract established by the designated procurement unit.*

(4) *Sections A(1)—(3) of this regulation do not apply to a secondary competition procurement designated as a small business reserve in accordance with State Finance and Procurement Article, §14–502, Annotated Code of Maryland.*

B.—E. (text unchanged)

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

A. (text unchanged)

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.] *Except as provided in §C of this regulation, oral presentations are required prior to selecting a master Contractor when:*

(1) *The total value of the secondary competition award is expected to exceed \$2,000,000 for architectural and engineering services;*

(2) *The total value of the secondary competition award is expected to exceed \$10,000,000 for construction and construction related services; or*

(3) *For all other procurements, including information technology and professional services, when the total value of the secondary competition award is expected to exceed \$5,000,000.*

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.] *If the procurement officer makes a written determination that oral presentations are unlikely to aid in the evaluation process, oral presentations will not be required.*

[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.]

#### **.07 [Construction Master Contract Exceptions.] Secondary Competition Awards.**

[The requirements in Regulation .05A(1) and (2) 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 contractor agreement for construction.]

A. *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.*

B. *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.*

C. 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 secondary competition award 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 secondary competition awards may be issued after the master contract's original, unmodified end date.

D. 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.

E. 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.

F. Procurement agencies are required to report secondary competition awards over the applicable small procurement amount in COMAR 21.05.07.01 in eMaryland Marketplace.

**.08 Construction Master Contract Exceptions.**

The requirements in Regulations .05A(1)—(4) 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 secondary competition awards will be awarded and the maximum number of qualified contractors that will be awarded a master contractor agreement for construction.

## **21.05.15 [Pay-for-Success Contracting] Legislative Fast-Track Procurement**

Authority: State Finance and Procurement Article, §§13-101, 13-102, and 13-117, Annotated Code of Maryland; Ch. 601 and Ch. 625 Acts of 2025

**.01 General.**

A. The Legislative Fast-Track Procurement method may be used only for the procurement of consultants to assist with legislative mandates that:

- (1) Have specific time frames established in law; and
- (2) Will address issues related only to climate change, the environment, energy, and greenhouse gas emissions.

B. The Legislative Fast-Track Procurement method may be used by the following only:

- (1) Public Service Commission;
- (2) Office of People's Counsel;
- (3) Maryland Energy Administration;
- (4) Department of the Environment; and
- (5) Department of Natural Resources.

**.02 Method.**

The procuring agencies in Regulation .01 of this chapter may issue competitive sealed bids to procure consultants for the legislative mandates identified in Regulation .01 of this chapter at a value that is higher than their designated small procurement delegations.

**.03 Approval.**

A. Before awarding a procurement contract under this method, the procurement officer shall obtain the approval of:

- (1) The head of the unit; and
- (2) The Chief Procurement Officer, or designee.

B. The Chief Procurement Officer, or designee, shall approve a procurement contract submitted under this section if it complies with the requirements of this section. If the Chief Procurement Officer, or designee, does not act to approve or disapprove a procurement contract submitted under this section within 5 business days after receiving the contract, the contract shall be considered approved.

## **Subtitle 06 CONTRACT FORMATION AND AWARD**

### **21.06.07 Bid and Contract Security/Bonds**

Authority: State Finance and Procurement Article, §§12-101, 13-207—13-209, 13-216, and 17-102—17-109, Annotated Code of Maryland; Ch. 601, Acts of 2025

**.01 General.**

A. Nothing contained in this chapter prevents a procurement officer from requiring performance or payment bonds, or both, on supply, service, maintenance, or construction-related service contracts if the contract is expected to exceed [\$100,000] the applicable small procurement amount in COMAR 21.05.07.01.

B.—I. (text unchanged)

**.09 Bid Security.**

A. General.

(1) Solicitations on all State construction contracts when the contract is expected to exceed [\$100,000] *the applicable small procurement amount in COMAR 21.05.07.01* require the submission of bid security in an amount equal to at least 5 percent of the amount of the bid or price proposal except that, for bids stating a rate but not a total cost, the bid bond shall be in an amount as determined by the procurement officer. Bid security or evidence of the posting of bid security shall be submitted with the bid or proposal. Bid bonds may be required for any other procurement over [\$50,000] *the applicable small procurement amount in COMAR 21.05.07.01*, as determined by the procurement officer. If a contractor fails to accompany its bid with the required bid security, the bid shall be considered nonresponsive and rejected except as provided by §§B and D of this regulation.

(2) A procurement officer may require a bid security for a bid or proposal for services, supplies, maintenance, or construction-related services if the contract is expected to exceed [\$50,000] *the applicable small procurement amount in COMAR 21.05.07.01*. The procurement officer shall set the amount of the security.

B.—D. (text unchanged)

#### **.10 Performance and Payment Bonds.**

##### **A. Performance Bonds.**

(1) General. A performance bond is required for all construction contracts in excess of [\$100,000] *the applicable small procurement amount in COMAR 21.05.07.01* in the amount equal to at least 100 percent of the contract price. A performance bond may be required for a contract for services, supplies, maintenance, or construction-related services expected to exceed [\$100,000] *the applicable small procurement amount in COMAR 21.05.07.01*, as determined by the procurement officer. The performance bond shall be delivered by the contractor to the State not later than the time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder.

(2) (text unchanged)

##### **B. Payment Bonds.**

(1) General. A payment bond is required for all construction contracts in excess of [\$100,000] *the applicable small procurement amount in COMAR 21.05.07.01* in the amount equal to at least 100 percent of the contract price. The payment bond shall be delivered by the contractor to the State not later than the time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder.

(2) (text unchanged)

C. (text unchanged)

### **21.06.09 Invoicing, Payment, and Interest on Late Payments**

Authority: State Finance and Procurement Article, §§15-101—15-105, Annotated Code of Maryland; *Ch. 601, Acts of 2025*

#### **.05 Payment Period.**

A. Unless payment is deferred, delayed, or set-off under COMAR 21.02.07.03, payment under a procurement contract shall be made [within 30 days]:

(1) [After the day on which the payment becomes due under the procurement contract; or] Within 30 days after the day on which the payment becomes due and the agency receives a proper invoice; or

(2) [If later, after the day on which the agency receives a proper invoice.] *For a small business reserve contract, within 15 days after the day on which the payment becomes due and the procuring agency receives a proper invoice.*

B.—C. (text unchanged)

### **21.06.10 Pay for Success Contracting**

Authority: State Finance and Procurement Article, §13-228, Annotated Code of Maryland; *Ch. 601, Acts of 2025*

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

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Aggregator" means a person that:

(a) Provides or contracts for environmental outcomes; or

(b) Provides or raises capital to finance delivery of environmental outcomes.

(2) "Environmental outcome" means a commodity that is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment, including a nutrient or carbon benefit.

(3) "Environmental outcomes project" means a project designed to secure environmental outcomes.

(4) "Evaluator" means a person other than an aggregator that determines whether environmental outcomes have been achieved based on defined performance measures.

(5) "Outcome payment" means the money paid when a pay-for-success contract performance measure is met.

(6) "Pay-for-success contracting" means a performance-based contracting method through which a unit contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of outcomes.

(7) "Quantification plan" means a plan in which an aggregator describes:

- (a) *The method that will be used to measure or model environmental outcomes and co-benefits under a pay-for-success contract;*
- (b) *The compliance monitoring that will occur to ensure that the actions proposed in the pay-for-success contract are taken and maintained over the life of the project;*
- (c) *Verification steps that will be carried out by the State to confirm model results or accurate measurement of environmental outcomes; and*
- (d) *The timeline for proposed payments under the pay-for-success contract.*

#### **.02 Background.**

*The General Assembly has found and declared that:*

- A. Pay-for-success contracting shifts the risk of performance to the contractor because government payment is made only on achievement of outcomes;*
- B. Social and environmental impact investment is growing dramatically, and investors are seeking ways to finance and execute pay-for-success contracts in the State to expand the success of Chesapeake Bay restoration efforts and achieve other public outcomes; and*
- C. It is in the best interest of the State to include pay-for-success contracting as a contract option, particularly for units responsible for land conservation and environmental protection, enhancement, and restoration.*

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

- A. A unit may enter into a pay-for-success contract only if the procurement officer of the unit determines that:
  - (1) *The contract will produce estimated financial savings or other quantifiable public benefits for the State; and*
  - (2) *A substantial portion of the outcome payment due under the contract will be paid only after specific outcomes have been documented.**
- B. This chapter applies only to contracts of:
  - (1) *The Department of Agriculture;*
  - (2) *The Department of the Environment;*
  - (3) *The Department of Natural Resources;*
  - (4) *The Department of Transportation;*
  - (5) *The Maryland Environmental Service; and*
  - (6) *The Department of General Services.**
- C. This chapter does not apply to the purchase of nitrogen load reductions with funds from the Clean Water Commerce Account of the Bay Restoration Fund established under Environment Article, §9-1605.2, Annotated Code of Maryland.*
- D. A unit specified in §B of this regulation may enter into a pay-for-success contract with an aggregator to procure:
  - (1) *Delivery of an environmental outcomes project; or*
  - (2) *Already certified environmental outcomes.**
- E. Other State and local entities may participate in a pay-for-success contract under this chapter in accordance with an intergovernmental cooperative purchasing agreement under COMAR 21.05.09.*

#### **.04 Pay-for-Success Contracts.**

- A. A pay-for-success contract executed under this regulation shall include:
  - (1) *A quantification plan approved by the unit;*
  - (2) *A statement of the environmental outcomes to be delivered under the contract and a description of how defined performance measures will demonstrate progress in achieving these outcomes;*
  - (3) *Requirements regarding the content and frequency of progress reports regarding the achievement of environmental outcomes;*
  - (4) *A methodology for calculating the amount and timing of outcome payments to an aggregator when the evaluator determines that the aggregator has achieved a defined performance measure;*
  - (5) *A statement that the basis of payment is the determination of achievement of environmental outcomes by the evaluator and that payments for those outcomes do not require itemized billing or cost documentation by the aggregator; and*
  - (6) *Terms addressing:
    - (a) *Compliance with State law;*
    - (b) *Nondiscrimination in employment;*
    - (c) *Contractor indemnification;*
    - (d) *Termination for default; and*
    - (e) *The unit's right to inspect the environmental outcomes project.***
- B. A pay-for-success contract executed under this regulation may include provisions regarding:
  - (1) *Long-term maintenance and monitoring of environmental services, including the establishment of a stewardship fund;*
  - (2) *A requirement that the unit hold contract funds in a reserve account for outcome payments;*
  - (3) *For agriculture services, payment for achievement of baseline water quality requirements for nitrogen, phosphorus, or sediment; or*
  - (4) *Terminations prior to the first payment under the contract for the purpose of selling environmental outcomes without penalty to another entity or for any other reason.**

**.05 Review and Evaluation of Results by the Maryland Environmental Service.**

A. Beginning July 2025 and every 3 years thereafter, the Maryland Environmental Service shall review and evaluate the results of all pay-for-success contracts completed under this section for the previous 3 fiscal years.

B. The review conducted under §A of this regulation shall include:

- (1) The cost of each project performed under a contract;
- (2) The length of time taken to complete the project, from the date of notice to proceed until completion;
- (3) The average cost and project duration for each project type; and
- (4) Whether each project met the terms of its contract.

C. Each unit that enters into a pay-for-success contract under this regulation shall execute an agreement with the Maryland Environmental Service to reimburse the Service for each of the unit's completed contracts the Service reviews under this regulation.

D. The Maryland Environmental Service shall provide copies of each review conducted under this regulation to:

- (1) Each unit for which the Service reviewed and evaluated a contract; and
- (2) In accordance with State Government Article, §2-1257, Annotated Code of Maryland, the Senate Education, Health, and Environmental Affairs Committee, the Senate Budget and Taxation Committee, the House Environment and Transportation Committee, and the House Appropriations Committee.

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

### **21.07.01 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; General Provisions Article, §§5-101 and 5-503; State Finance and Procurement Article, §§12-101, 13-207, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 15-226, 16-202, 17-401, 17-402, and 19-114; Annotated Code of Maryland; Chs. 588, 589, and 630, Acts of 2017; Ch. 403, Acts of 2019; *Ch. 601, Acts of 2025*

#### **.18 Payment of State Obligations.**

Mandatory provision for all contracts. The following clause is preferred:

“Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days *or, for a Small Business Reserve contract, within 15 days, after the day on which the payment becomes due and* the State’s receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State’s payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.”

#### **.19 Financial Disclosure.**

Mandatory provision for all contracts:

“The Contractor shall comply with the provisions of [State Finance and Procurement Article §13-221] *Election Law Article, §14-104*, Annotated Code of Maryland. That section requires a business to file with the [Secretary of State of Maryland] *State Board of Elections* certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.”

#### **.24 Truth-In-Negotiation Certification.**

Mandatory provision for architectural services or engineering services contracts exceeding [ \$100,000 ] *\$200,000*. It shall be in substantially the same form as follows:

“Truth-In-Negotiation Certification.

The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

A – C. (text unchanged)

#### **.27 Performance and Payment Bonds.**

Mandatory provision for contracts exceeding [ \$100,000 ] *the applicable small procurement amount in State Finance and Procurement Article, §13-109, Annotated Code of Maryland*, with surety bond requirements:

A.—B. (text unchanged)



2. The above named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full may, pursuant to and when in compliance with the provisions of [the aforesaid Section 9-113] *State Finance and Procurement Article*, Title 17, Subtitle 1, *Annotated Code of Maryland*, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligees shall not be liable for the payment of any costs or expenses of any such suit.

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 Payment 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 Payment 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 Payment 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.

_____	
In Presence of:	Individual Principal
Witness:	(SEAL)
_____ as to _____	(SEAL)
_____	
In Presence of:	Co-Partnership Principal
Witness:	(SEAL)
_____ as to _____	(Name of Co-Partnership)
_____ as to _____	By: (SEAL)
_____ as to _____	(SEAL)
_____ as to _____	(SEAL)
_____	
Corporate Principal	
Attest:	(Name of Corporation)
	AFFIX
	By: CORPORATE
Corporate Secretary	President SEAL
_____	
(Corporate Surety)	
Attest: (SEAL)	By: SEAL
	Title
Signature	
Bonding Agent's Name:	
	(Business Address of Surety)
Agent's Address	
_____	
Approved as to legal form and sufficiency this	
	day of 20
_____	
Asst. Attorney General	

**.11 Performance and Payment Bonds — Multiyear Annual and Renewable.**

Optional forms for multiyear construction contracts exceeding [\$100,000] *the small procurement amount for construction contracts in State Finance and Procurement Article, §13-109, Annotated Code of Maryland*, with annual and renewable surety bonds:

- A. (text unchanged)
- B. Payment Bond. The required payment bond shall be in the form specified as follows:

**ANNUAL PAYMENT BOND—RENEWABLE FOR MULTIYEAR AWARDS**

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

KNOW ALL BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment 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 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 multiyear contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described 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 to as the "Contract".

The term of this Bond is for the period beginning on the date the bond is executed and ending on the indicated Initial Term Fiscal Year Ending Date (the "Initial Term"). If requested by the Principal, the Initial Term may be extended, solely at the option of the Surety, for additional one (1) year periods (each a "Renewal Term"), ending on the subsequent Fiscal Year ending date. This Bond shall expire at the end of the Initial Term or, if extended, at the end of the final Renewal Term. Provided that at any time should the surety elect not to extend the bond for a Renewal Term, it must so inform the Obligee in writing prior to ninety (90) days before the expiry of the existing Initial Term or final Renewal Term. If the surety does not so inform the Obligee of its intention not to extend the bond as stated herein, the bond will automatically be deemed extended for an additional Renewal Term.

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

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in a Contract, entitled to the protection provided by [Section 9-113 of the Real Property Article of the Annotated Code of Maryland] *State Finance and Procurement Article, Title 17, Subtitle 1, Annotated Code of Maryland*, as from time to time amended.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been in full may, pursuant to and when in compliance with the provisions of [the aforesaid Section 9-113] *State Finance and Procurement Article, Title 17, Subtitle 1, Annotated Code of Maryland*, sue on this Bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

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

This Payment 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 Payment 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.

In Presence of:	Individual Principal
Witness: _____ as to _____	_____ (SEAL)
In Presence of:	Co-Partnership Principal
Witness: _____	_____ (SEAL)
_____ as to _____	By: _____ (SEAL)
_____ as to _____	_____ (SEAL)
_____ as to _____	_____ (SEAL)
Attest:	Corporate Principal _____ (Name of Corporation) AFFIX
_____ Corporate Secretary	By: _____ (CORPORATE) President SEAL
	_____ (Corporate Surety)
Attest (SEAL)	By: _____ (SEAL)
_____ Signature	Title _____
Bonding Agent's Name: _____	_____
_____ Agent's Address	(Business Address of Surety)
	Approved as to legal form and sufficiency this
	_____ day of _____ 20 _____
	_____
	Asst. Attorney General

#### 21.07.04 Prohibited Provisions

Authority: State Finance and Procurement Article, §2-901, Annotated Code of Maryland

##### .02 Contract Prohibitions.

A. Except as required by State or federal law, a State contract may not include the following:

(1)—(3) (text unchanged)

(4) A provision that requires the State to agree to limit the liability for any direct loss to the State for bodily injury, death, or damage to *real property or tangible personal property* of the State caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents or a provision that would otherwise impose an indemnification obligation on the State;

(5)—(9) (text unchanged)

(10) A provision that limits the State's ability to recover the *difference in the cost of a replacement contractor to perform the services not performed by the original contractor, to the extent that the sum of the amount paid to the replacement contractor and the amount paid to the original contractor exceed the costs provided for in the contract with the original contractor.*

B.—C. (text unchanged)

### Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES

#### 21.10.04 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.—D. (text unchanged)

E. Construction Contracts.

(1) (text unchanged)

(2) The reviewing authority shall mail or deliver written notification of its decision to the contractor within:

(a) 90 days after the procurement officer receives the claim if the claim is an amount for which the Appeals Board [accelerated] “*Small Claims*” procedure, set forth in COMAR 21.10.06.12, may be used;

(b)—(c) (text unchanged)

(3)—(5) (text unchanged)

## Subtitle 11 SOCIOECONOMIC POLICIES

### 21.11.01 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. 601, Acts of 2025*

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) “Certified small business” (“CSB”) means a business, other than a nonprofit business, that:

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

(b) (text unchanged)

(2)—(7) (text unchanged)

**.06 Small Business Reserve Program.**

A. Applicability.

(1) (text unchanged)

(2) A procurement with a total dollar value [between \$50,000 and \$500,000] of \$1,000,000 or less shall be designated for the small business reserve.

(3) Exemptions. The requirements of the Small Business Reserve Program do not apply to the following procurements:

(a)—(b) (text unchanged)

(c) [Procurements with a total dollar value under \$50,000.]

[(d)] Procurements for human, social, cultural, or educational services.

[(e)] (d) Certain term and master contract procurements when the [Governor’s] Office of Small, Minority & Women Business Affairs certifies, concurrently with review of any waiver determinations for certified minority business enterprise participation contract goals, that it is not practicable to designate the procurement for the small business reserve.

B.—D. (text unchanged)

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

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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 [Governor’s] Office of Small, Minority, & 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. It is independently owned and operated;

B. It is not a subsidiary of another business;

C. It is not dominant in its field of operation; and

D. Either:

(1) With respect to employees:

(a) Its wholesale operations did not employ more than 50 persons in its most recently completed 3 fiscal years;

(b) Its retail operations did not employ more than 25 persons in its most recently completed 3 fiscal years;

(c) Its manufacturing operations did not employ more than 100 persons in its most recently completed 3 fiscal years;

(d) Its service operations did not employ more than 100 persons in its most recently completed 3 fiscal years;

(e) Its construction operations did not employ more than 50 persons in its most recently completed 3 fiscal years; and

(f) The architectural and engineering services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; or

- (2) With respect to gross sales:
- (a) The gross sales of its wholesale operations did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal years;
  - (b) The gross sales of its retail operations did not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;
  - (c) The gross sales of its manufacturing operations did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;
  - (d) The gross sales of its service operations did not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;
  - (e) The gross sales of its construction operations did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years; and
  - (f) The gross sales of its architectural and engineering operations did not exceed an average of \$4,500,000 in its most recently completed 3 fiscal years.

Note: If a business has not existed for 3 years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.

Further information on the certification process is available at eMaryland Marketplace.

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F. (text unchanged)

G. Before awarding a contract under a procurement designated as a small business reserve procurement, the procurement officer shall verify that the apparent awardee is certified by the [Governor's] Office of Small, Minority, & Women Business Affairs as a small business. A procurement contract award under a small business reserve procurement may not be made to a business that has not been certified.

H.—I. (text unchanged)

### 21.11.03 Minority Business Enterprise Policies

Authority: State Finance and Procurement Article, §§12-101 and 14-301--14-308, Annotated Code of Maryland; *Ch. 601, Acts of 2025*

#### **.01 General—Purpose.**

This chapter provides that maximum contracting opportunities be extended to certified minority business enterprises, as both prime contractors and subcontractors, and establishes that:

A. The Special Secretary of the [Governor's] Office of Small, Minority & Women Business Affairs, in consultation with the Secretary of Transportation, *Chief Procurement Officer*, and the Attorney General, shall establish the overall percentage certified MBE participation goal through regulation on a biennial basis.

B. (text unchanged)

C. Each procurement agency shall:

(1) (text unchanged)

(2) Apply the guidelines established by the Special Secretary of the [Office of Minority Affairs] *Office of Small, Minority & Women Business Affairs in consultation with the Secretary of Transportation, the Chief Procurement Officer, and the Attorney General* for determining the subgoals to be set for the groups listed in State Finance and Procurement Article, [§14-301(j)(1)(i)1, 2, 3, 4, and 6] §14-301(k)(1)(i)1, 2, 3, 4, and 6, Annotated Code of Maryland.

D.—E. (text unchanged)

#### **.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) “Certification agency” means the [Department of Transportation] Office of Minority Business [Enterprise] *Enterprises in the Department of Social and Economic Mobility*.

(3)—(9) (text unchanged)

(10) “Office of Minority Affairs” means the [Governor's] Office of Small, Minority & Women Business Affairs *in the Department of Social and Economic Mobility*.

(11)—(17) (text unchanged)

#### **.04 Procurement Agency Responsibility.**

A.—C. (text unchanged)

D. Procurement agencies shall use the forms and affidavits developed by the [Governor's] Office of Small, Minority & Women Business Affairs, the Board of Public Works, and the [Department of Transportation] *Office of Minority Business Enterprises* for the certification and reporting procedures required by this chapter.

#### **.07 Race Neutral Measures.**

Race neutral measures may include:

A. (text unchanged)

B. Procurement agencies periodically conducting meetings with minority business enterprises and other small businesses, as appropriate, to advise of procurement opportunities within that procurement agency, which shall be coordinated with the [Governor's] Office of Small, Minority & Women Business Affairs and other State agencies that make similar procurements;

C. The [Governor's] Office of Small, Minority & Women Business Affairs periodically convening seminars that include MBEs and small businesses, and appropriate personnel of the various procurement agencies, which shall include topics of interest to prospective or current MBEs and small businesses such as State procurement procedures, certification, and anticipated State procurements, and may include technical assistance to MBEs and small businesses relating to the procurement process from the Office of Minority Affairs;

D. The [Governor's] Office of Small, Minority & Women Business Affairs providing notice of all seminars and meetings undertaken under the regulation to each MBE listed in the Central Directory or identified under COMAR 21.05.07.06 and each small business listed in the Department of General Services small business vendor lists that may be reasonably expected to be interested in the effort, as well as to those entities described in Regulation .09D of this chapter;

E.—H. (text unchanged)

#### **.08 MBE Notification.**

Within 30 days following the first day of the fiscal year, each procurement agency shall forward to the [Governor's] Office of Small, Minority & Women Business Affairs a complete listing of all known regularly recurring procurement solicitations reasonably expected to be [of \$100,000 or] more *than the applicable small procurement amount in COMAR 21.05.07.01 for the respective procurement type*. The list shall be in an electronic format and include the subject of the contract, where the work is to be performed or delivery made, the approximate solicitation date, and the contact information of the procurement officer. The Office of Minority Affairs shall compile a master list containing this information.

#### **.09 Procurement Solicitations.**

A. To attain the overall and specific MBE goals under Regulation .01C of this chapter, procurement agencies shall set, where appropriate, an overall certified MBE participation goal, expressed as a percentage of the dollar value of the contract, and subgoals to facilitate the participation of certain groups as prescribed under Regulation .01C(2) of this chapter, unless:

(1) The procurement is a construction contract having an estimated value of less than [\$50,000] *the small procurement amount for construction contracts in COMAR 21.05.07.01*; or

(2) (text unchanged)

B. Goal Setting Generally.

(1)—(2) (text unchanged)

(3) The following factors may be used to anticipate the degree of certified MBE prime contractor participation, to decide the certified MBE participation goal and subgoals, when used, and the MBE prime contractor and subcontractor procurement strategy to be used:

(a)—(d) (text unchanged)

(e) The guidelines established by the [Governor's] Office of Small, Minority & Women Business Affairs for determining the subgoals to be set for the groups listed in State Finance and Procurement Article, §14-301(k)(1)(i)1, 2, 3, 4 and 6, Annotated Code of Maryland.

(4)—(5) (text unchanged)

C. MBE Subcontracting Provisions.

(1)—(4) (text unchanged)

(5) [The failure of a bidder to accurately complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the bid is not responsive unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.] *If a bidder or offeror fails to complete accurately or submit the MBE utilization affidavit or MBE participation schedule, an agency's procurement officer, after consultation with the agency's minority business liaison, shall notify the bidder or offeror of the deficiency and require the bidder or offeror to submit an amended MBE utilization affidavit, MBE participation schedule, or both within three business days.*

(6) [The failure of an offeror to accurately complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the proposal is not reasonably susceptible of being selected for award unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04]. *If, within 3 business days, the bidder or offeror fails to submit the amended form or forms correcting the deficiency identified in §C(5) of this regulation, the procurement officer may determine, in the case of a bid, that the bid is not responsive or, in the case of a proposal, that the proposal is not reasonably susceptible of being selected for award.*

(7)—(8) (text unchanged)

D.—F. (text unchanged)

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

A.—C. (text unchanged)

D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the [Governor's] Office of Small, Minority & Women Business Affairs.

E. Not later than July 31 of each year, each procurement agency shall submit directly to the Board of Public Works and the [Governor's] Office of Small, Minority & Women Business Affairs an Annual Report of Waivers Requested and Waivers Granted under this regulation.

F. (text unchanged)

G. The Board shall:

(1) (text unchanged)

(2) Forward a copy to the General Assembly, the [Governor's] Office of Small, Minority & Women Business Affairs, and each control agency, before October 1 of each year.

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

A. [If at] *At any time [after submission of a bid or proposal and] before execution of a contract, a procuring agency may amend the MBE participation goal in a procurement solicitation if the procuring agency: [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 ineligible to perform the work required under the contract, then the bidder or offeror:]*

(1) *[Within 72 hours of making the determination, shall provide written notice to the procurement officer; and] Makes a determination that there has been a change in the factors established under COMAR 21.11.03.09;*

(2) *[Within 5 business days of making the determination, may make a written request to the procurement officer to amend the MBE participation schedule.] Uses the factors established under COMAR 21.11.03.09 to determine the percentage modification to the minority business participation goal; and*

(3) *Amends the solicitation, obtains acknowledgment of the amendment from bidders or offerors, as applicable, and allows an opportunity for bidders or offerors to submit subsequently or revise their bid or proposal prices.*

[B. For purposes of this regulation, "ineligible" means an MBE certified by the certification agency that may not be counted toward meeting the MBE subcontract participation goal established for the procurement because:

(1) The MBE is not certified by the certification agency to provide the services, materials, or supplies the bidder or offeror has committed the MBE to provide on the MBE participation schedule;

(2) The MBE has graduated from the NAICS Code associated with the services, materials, or supplies the bidder or offeror has designated the MBE to provide; or

(3) The MBE no longer meets the personal net worth requirements of Regulation .03 of this chapter.

C. The request to amend the MBE participation schedule shall include:

(1) An explanation of the reason for inclusion of the unavailable or ineligible firm on the original MBE participation schedule;

(2) The name of each certified MBE subcontractor that will substitute for the unavailable or ineligible certified MBE subcontractor;

(3) A description of work to be performed by each certified MBE subcontractor;

(4) The percentage of the contract to be paid to the certified MBE subcontractor for the work or supply; and

(5) A full description of the bidder's or offeror's efforts to substitute another certified MBE subcontractor to perform the work that the unavailable or ineligible certified MBE subcontractor would have performed.

D. The procurement officer shall consult with the MBE liaison before deciding whether to approve a request to amend the MBE participation schedule.]

[E.] *B. Amendments to the MBE Participation Schedule and Goal Occurring After the Date of Contract Award.*

(1) (text unchanged)

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

(a)—(b) (text unchanged)

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

(d) Subsequently amending the contract[.], and

(e) *Providing a full description of the contractor's efforts to substitute another certified MBE subcontractor to perform the work that the unavailable or ineligible certified MBE subcontractor would have performed.*

(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.

(4) *Subject to §B(5) of this regulation, a procuring agency may consider modifying the minority business participation goal on a procurement contract after contract execution.*

(5) *Before a procuring agency may consider modifying a minority business participation goal after contract execution, the procuring agency shall:*

(a) *Determine the following in writing:*

(i) *That modification is in the best interest of the State;*

(ii) *That there has been a change in the factors established under COMAR 21.11.03.09; and*

(iii) *Using the factors established under COMAR 21.11.03.09, the percentage modification to the minority business participation goal;*

(b) *Obtain the agreement of the contractor through a written contract modification, including any reasonable pricing consideration; and*

(c) *Obtain the following approvals:*

- (i) Approval of the agency head;
- (ii) If the goal decreases and the modification would not otherwise require Board approval under §B(5)(c)(iii) of this regulation, approval of the Board of Public Works; and
- (iii) Any other approvals required by this title.

### **.13 Compliance.**

- A. (text unchanged)
- B. The contractor shall:
  - (1) (text unchanged)
  - (2) If performing a State [construction] contract, ensure that all subcontractors are paid any undisputed amount to which the subcontractor is entitled within 10 calendar days of receiving a progress or final payment from the State and otherwise comply with COMAR 21.10.08 which sets forth the obligations of the prime contractor, contractors, and subcontractors and the remedies for delinquency or nonpayment of undisputed amounts, in State [construction] contracts.
  - (3) Submit [monthly] to the procurement agency a report listing payments made to each MBE subcontractor [in the preceding 30 days] and any unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made; [and]
  - (4) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit [monthly] to the procurement agency a report for each month during which the MBE performs work or receives payment under the contract identifying the prime contract and listing:
    - (a) Payments received from the contractor in the preceding 30 days, and
    - (b) Invoices for which the subcontractor has not been paid[.]; and
    - (c) Any other information requested based on criteria established by the Office of Small, Minority, & Women Business Affairs under a contract governed by State Finance and Procurement Article, §11-301 et seq., Annotated Code of Maryland.
- C.—G. (text unchanged)

### **.15 Certification — General.**

- A. The [Department of Transportation] *Department of Economic and Social Mobility Office of Minority Business Enterprises* is the agency designated to certify, recertify, and decertify MBEs. A procurement agency may not permit a person to participate in a procurement as a certified MBE unless the [Department of Transportation] *Department of Economic and Social Mobility Office of Minority Business Enterprises*, as the certification agency, has certified the person as a minority business enterprise.
- B. Procedure.
  - (1) Contractors seeking MBE certification shall apply to the [Department of Transportation] certification agency. Certification procedures, including procedures for recertification and decertification, are those set forth in COMAR 11.01.10.01, which incorporates by reference the Department of Transportation "Minority Business Enterprise Program".
  - (2) (text unchanged)
- C. Information Which May Be Requested. The [Department of Transportation] *certification agency* may request the following information to assist in any certification, recertification, decertification, participation, or graduation determination. Failure to furnish the requested information within a reasonable time as specified in writing may result in an administrative closing of an application, a denial of certification or recertification, or a determination to decertify. The information consists of:
  - (1)—(3) (text unchanged)
  - (4) Other information the [Department of Transportation] *certification agency* determines is necessary.
- D. A business that has received certification from a federal or county MBE program that uses a certification process substantially similar to the process established in this regulation shall be eligible for certification by the [Department of Transportation] certification agency as a State-certified MBE if the business:
  - (1)—(2) (text unchanged)

### **.17 Reporting.**

- A. Each procurement agency shall make a report annually within 90 days following the close of the fiscal year to the [Governor's] Office of Small, Minority & Women Business Affairs, the [Department of Transportation] *certification agency*, and, subject to State Government Article, §2-1257, Annotated Code of Maryland, to the Joint Committee on Fair Practices and State Personnel Oversight that includes for the preceding fiscal year:
  - (1)—(7) (text unchanged)
- B. (text unchanged)
- C. A report under §A of this regulation shall be in a form prescribed by the [Governor's] Office of Small, Minority & Women Business Affairs and the [Department of Transportation] *certification agency* and approved by the Board of Public Works.
- D. The Special Secretary for the [Governor's] Office of Small, Minority & Women Business Affairs may waive the requirement for a procurement agency to report MBE participation by industry type under §A of this regulation except for real property title insurance services if the spending threshold for the industry type is too low for the unit to provide sufficient data.
- E. Each procurement agency shall submit to the Board of Public Works and the [Governor's] Office of Small, Minority & Women Business Affairs by July 31 of each year the report of waivers required under Regulation .11E of this chapter.
- F. Each procurement agency shall furnish any other information or periodic reports requested by the [Governor's] Office of Small, Minority & Women Business Affairs or the [Department of Transportation] *certification agency* in connection with MBE

certification and procurement, or any other matters related to the administration, effectiveness, or continuation of the Minority Business Enterprise Program.

G. The [Governor's] Office of Small, Minority & Women Business Affairs shall prepare an annual report summarizing the information the [Governor's] Office of Small, Minority & Women Business Affairs receives under §A of this regulation, for submission by the end of each calendar year to the Board of Public Works and, subject to State Government Article, §2-1257, Annotated Code of Maryland, the Legislative Policy Committee of the Maryland General Assembly, and to each procurement agency. If applicable, this report shall include MBE participation data for each unit by industry type.

### **21.11.05 Procurement from Maryland Correctional Enterprises, Blind Industries and Services of Maryland, and the Employment Works Program**

Authority: Correctional Services Article, §3-515; State Finance and Procurement Article, §§12-101 and 14-101—14-108; Annotated Code of Maryland; Ch. 415, Acts of 2015; Ch. 313, Acts of 2016; *Chs. 601 and 726, Acts of 2025*

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

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(2-1) “Employment Works Program” means the program established in the [Department of General Services] *Office of Small, Minority, & Women Business Affairs* by State Finance and Procurement Article, §14-108, Annotated Code of Maryland.

(3)—(10) (text unchanged)

#### **.06 Responsibility of Selling Entities.**

Each selling entity shall:

A. (text unchanged)

B. Consult periodically with the procurement agencies and, as appropriate, with the [Secretary of General Services] *Chief Procurement Officer* or designee, to assist in the establishment of reasonable and uniform standards, including those governing quantity, quality, style, design, and delivery of services and supplies pursuant to this chapter;

C. Within 5 working days of receipt of an inquiry from a procurement agency, notify the procurement agency, *Chief Procurement Officer*, [and the Secretary of General Services] or designee if the requested service or supply can or cannot be provided in accordance with the procurement agency's specifications within the time specified in the solicitation;

D. Promptly notify the [Secretary of General Services] *Chief Procurement Officer* or designee if any service or supply included in the master list shall become unavailable;

E. Immediately notify the [Secretary of General Services] *Chief Procurement Officer or designee or, in a matter concerning the Employment Works program, the Special Secretary for the Office of Small, Minority, & Women Business Affairs or designee*, of any unresolved dispute with a procurement agency and request its resolution by the [Secretary] *Chief Procurement Officer or Special Secretary, as applicable, or their designees*.

F. (text unchanged)

#### **.07 Responsibilities of Procurement Agencies.**

General Purchasing Requirements

(1)—(2) (text unchanged)

(3) To the extent practicable, a State unit or State aided or controlled entity shall include in a maintenance contract that has a component for housekeeping or janitorial services, a requirement that a prime contractor procure janitorial products from Blind Industries and Services of Maryland if the specified products are made, manufactured, remanufactured, *packaged, repackaged*, or assembled by Blind Industries and Services of Maryland and are available.

B.—E. (text unchanged)

F. Disputes. A procurement agency shall promptly notify the [Secretary of General Services] *Chief Procurement Officer or designee or, in a matter concerning the Employment Works program, the Special Secretary for the Office of Small, Minority, & Women Business Affairs or designee* of any dispute with a selling entity concerning supplies or services.

### **21.11.07 Miscellaneous Purchasing Preferences**

Authority: State Finance and Procurement Article, §§12-101, 14-401—14-403, 14-405, and 14-407, Annotated Code of Maryland; Ch. 593, Acts of 2010; Ch. 314, *Acts of 2011*; Ch. 389, *Acts of 2025*

#### **.08 Locally Grown Foods**

A.—B. (text unchanged)

C. State schools and facilities shall include in procurement solicitations a price preference not exceeding [5] 10 percent to bids or proposals for locally grown food. A procurement officer:

(1) Shall specify in any specific procurement solicitation a price preference not exceeding [5] 10 percent; and

(2) May limit competition in any specific procurement solicitation to *responses from certified local farms as defined in State Finance and Procurement Article, §14-701, Annotated Code of Maryland* [only locally grown foods].

D. (text unchanged)

**.11 Energy Efficient Outdoor Lighting Fixtures.**

A. If State funds are used to install or replace a permanent outdoor luminaire for lighting on the grounds of any building, [or] facility, park, or trail owned or leased by the State or a unit of the State, procurement specifications shall require that:

(1) (text unchanged)

(2) *Except for a luminaire installed or replaced by the Department of Transportation, the luminaire has a correlated light temperature that is less than or equal to 3,000 Kelvins;*

[(2)] (3)—[(3)] (4) (text unchanged)

B. (text unchanged)

C. Applicability. This regulation does not apply to a luminaire:

(1)—(4) (text unchanged)

(5) Used for sign illumination; [or]

(6) In a lighting plan where less than 25 percent of the luminaires are to be replaced[.]; or

(7) *Used to illuminate the field of play at a sports facility.*

**21.11.12 State Apprenticeship Training Fund**

Authority: State Finance and Procurement Article, §§17-603—17-606, Annotated Code of Maryland; *Ch. 601, Acts of 2025*

**.03 Contractor and Subcontractor Registration.**

A. Contractors performing work on a prevailing wage project shall complete the registration process at the Department's website.

B. Subcontractors who are performing work valued at [\$100,000 or] *more than the applicable small procurement amount listed in COMAR 21.05.07.01* on a prevailing wage project shall complete the registration process at the Department's website.

C. (text unchanged)

**.04 Contractor and Subcontractor Notification to Subcontractors.**

A. Contractors and subcontractors who hire subcontractors performing work valued at [\$100,000 or] *more than the applicable small procurement amount listed in COMAR 21.05.07.01* on a public work contract subject to the Maryland Prevailing Wage Law shall provide the subcontractors with written notice of the following requirements:

(1)—(2) (text unchanged)

(3) Subcontractors performing work on a prevailing wage project valued at [\$100,000 or] *more than the applicable small procurement amount listed in COMAR 21.05.07.01* are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.

B. (text unchanged)

**Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES**

**21.12.02 Department of Transportation and Department of General Services; A/E Services Exceeding \$200,000**

Authority: State Finance and Procurement Article, §13-112, Annotated Code of Maryland

**.05 Selection Procedure.**

A.—F. (text unchanged)

G. Technical Proposal Evaluation and Recommendation.

(1) (text unchanged)

(2) The Procuring Agency's Evaluation Committee shall do the following.

(a) (text unchanged)

(b) *Conduct oral presentations when the total value of the contract is expected to exceed \$2,000,000 unless the procurement officer makes a written determination that oral presentations are unlikely to aid in the evaluation process.*

[(b)] (c) (text unchanged)

(3) (text unchanged)

H.—I. (text unchanged)

**Subtitle 13 PROCUREMENT REPORTING REQUIREMENTS**

## 21.13.01 Reporting Requirements

Authority: Election Law Article, §§14-101 and 14-107; State Finance and Procurement Article, §§12-101, 13-207, 14-305, 14-505, 15-110, 15-111, and 17-104; Annotated Code of Maryland; *Chs. 601 and 605, Acts of 2025*

### **.02 Annual Report of Service Contracts Exceeding [\$100,000 in] *Small Procurement Value*.**

A. Each Department shall prepare and submit an annual written report within 60 days following the close of the fiscal year to the Chief Procurement Officer of contracts for services, construction-related services, architectural services, and engineering services that exceed [\$100,000] *the applicable small procurement amount in COMAR 21.05.07.01* during the preceding fiscal year, whether the procurement was conducted by the Department or subject to review by the Department. The report shall, at a minimum:

(1)—(3) (text unchanged)

B. (text unchanged)

### **.03 Reports of the Small Business Reserve Program.**

A. Each procurement unit shall submit an expenditure plan on the small business reserve program as set forth in COMAR 21.11.01.06D to the [Governor's] Office of Small, Minority & Women Business Affairs within 60 days after enactment of the annual budget bill by the General Assembly. The format of the expenditure plan shall be determined by the [Governor's] Office of Small, Minority & Women Business Affairs.

B. Each procurement unit shall submit a report on the small business reserve program to the [Governor's] Office of Small, Minority & Women Business Affairs within 90 days after the end of each fiscal year, in a format determined by the [Governor's] Office of Small, Minority & Women Business Affairs, that includes at a minimum:

(1)—(3) (text unchanged)

(4) Other information required by the [Governor's] Office of Small, Minority & Women Business Affairs.

C. By December 31 of each year, the [Governor's] Office of Small, Minority & Women Business Affairs shall summarize the information required in §D of this regulation and report to the Board of Public Works and, subject to State Government Article, §2-1257, Annotated Code of Maryland, the Legislative Policy Committee.

D. On or before December 1 each year, the certification agency designated under State Finance and Procurement Article, §14-303b, Annotated Code of Maryland, in consultation with the [Governor's] Office of Small, Minority & Women Business Affairs, shall submit to the Board of Public Works and, subject to State Government Article, §2-1257, Annotated Code of Maryland, to the Legislative Policy Committee a report on:

(1)—(2) (text unchanged)

### **.15 Report on Veteran-Owned Small Business Participation.**

A. On or before October 1 of each year, each procurement unit shall report to the [Governor's] Office of Small, Minority & Women Business Affairs on the number and amount of contracts awarded to VSBEs and the effectiveness of the VSBE program, in accordance with COMAR 21.11.14.06.

B. The report format shall be determined by the [Governor's] Office of Small, Minority & Women Business Affairs.

JOHN GONTRUM  
Executive Secretary