

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/23/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 9/30/2016

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
21	01	02	01
21	02	01	04
21	02	03	02,.03
21	04	01	03
21	05	01	01
21	05	05	04
21	05	08	03,.04,.07
21	05	12	01,.02,.03,.04,.05,.06,.07
21	06	07	09,.10
21	06	09	01,.02,.03,.04,.05,.06
21	07	01	08,.18,.20,.25,.26
21	07	02	04
21	11	03	09
21	11	09	01,.02
21	11	13	02,.05
21	12	04	10,.10-1
21	12	05	01
21	14	01	01,.02,.03,.04,.05,.06

3. Name of Promulgating Authority

Board of Public Works

4. Name of Regulations Coordinator

Devan B Perry

Telephone Number

410-260-7793

Mailing Address

80 Calvert Street

City	State	Zip Code
Annapolis	MD	21401

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5. Name of Person to Call About this Document

Gabrial Gnall

Telephone No.

410.260.7335

Email Address

gabrial.gnall@maryland.gov

6. Check applicable items:

X- New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 08/19/2016.

X- Repeal of Existing Regulations

_ Recodification

_ Incorporation by Reference of Documents Requiring DSD Approval

_ Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

_ Yes X- No

8. Incorporation by Reference

_ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

_ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

_ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Dori Jaffe, General Counsel, (telephone #410.260.7335) on August 23, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Sheila McDonald

Title

Executive Secretary

Telephone No.

410.260.7335

Date

August 23, 2016

Title 21

STATE PROCUREMENT REGULATIONS

Subtitle 01 GENERAL PROVISIONS

21.01.02 Terminology

Subtitle 02 STATE PROCUREMENT ORGANIZATION

21.02.01 Board of Public Works

Subtitle 02 STATE PROCUREMENT ORGANIZATION

21.02.03 Department of Budget and Management

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21.04.01 General Policies

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

21.05.01 General Provisions

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

21.05.05 Sole Source Procurement

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

21.05.08 Mandatory Written Solicitation Requirements

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

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

Subtitle 06 CONTRACT FORMATION AND AWARD

21.06.07 Bid and Contract Security/Bonds

Subtitle 06 CONTRACT FORMATION AND AWARD

21.06.09 Invoicing, Payment, and Interest on Late Payments

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)

Subtitle 07 CONTRACT TERMS AND CONDITIONS

21.07.02 Mandatory Construction Contract Clauses

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.03 Minority Business Enterprise Policies

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.09 Vending Facilities on Property Controlled by Department of General Services

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.13 Veteran-Owned Small Business Enterprises

Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES

21.12.04 Department of General Services; A/E Services Exceeding \$200,000

Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES

21.12.05 Department of General Services A/E Services \$[1]200,000 or Less

Subtitle 14 PROCUREMENT OF HUMAN, SOCIAL, CULTURAL, AND EDUCATIONAL SERVICES

21.14.01 General Regulations

Authority: State Finance and Procurement Article, §§11-101 and 12-101, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, and 13-108; Education Article, §§14-204, 14-205, and 14-405; Article 41, §§4-104.1 and 4-104.2; Annotated Code of Maryland; Chapter 471, 1991 Laws of Maryland; Chapter 608, Acts of 1999; State Finance and Procurement Article, §§3-405, 3-502, 12-101, 12-107, 13-103, 13-104, 13-107.1, and 13-111, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101 and 13-205, Annotated Code of Maryland; 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; State Finance and Procurement Article, §§12-101 and 13-107, Annotated Code of Maryland; State Finance and Procurement Article, §§3-412, 11-206, 12-101, 13-207, 13-218, 13-221, 13-317, 14-303, 14-308, 14-406, 16-102, 16-202, 16-203, 17-401—17-402, and Title 19; Election Law Article, §§14-101—14-108; Annotated Code of Maryland; Ch. 293, Acts of 2009; State Finance and Procurement Article, §§12-101, 13-207—13-209, 13-216, and 17-102—17-109, Annotated Code of Maryland; State Finance and Procurement Article, §§15-101, 15-102, 15-103, 15-104, 15-105; State Finance and Procurement Article, §§12-101, 13-216, 13-218, and 13-225, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101 and 14-301—14-308, Annotated Code of Maryland; Ch. 268, 283, 293, 328, and 715, Acts of 2009; Ch. 619, Acts of 2010; Chs. 252, 253, and 254, Acts of 2011; Ch. 154, Acts of 2012; State Finance and Procurement Article, §14-109; Education Article, §§21-301—21-303; Annotated Code of Maryland; Chs. 507 and 508, Acts of 2010; State Finance and Procurement Article, §§13-304 and 13-314, Annotated Code of Maryland; State Finance and

Procurement Article, §13-304, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101, 13-102, 13-104, 13-106, 13-108, and 13-109, Annotated Code of Maryland

Notice of Proposed Action

□

The Board of Public Works proposes to 1) Amend Regulation .01 under COMAR 21.01.02, Regulation .04 under COMAR 21.02.01, Regulations .02 and .03 under COMAR 21.02.03, Regulation .03 under COMAR 21.04.01, Regulation .01 under COMAR 21.05.01, Regulation .04 under COMAR 21.05.05, Regulations .03, .04, and .07 under COMAR 21.05.08, Regulations .09 and .10 under COMAR 21.06.07, Regulation .04 under COMAR 21.07.02, Regulation .09 under COMAR 21.11.03, Regulations .01 and .02 under COMAR 21.11.09, Regulations .02 and .05 under COMAR 21.11.13, Regulations .10 and .10-1 under COMAR 21.12.04, and Regulation .01 under COMAR 21.12.05; 2) Repeal Regulation .01-.06 under COMAR 21.14.01; and 3) adopt new Regulations .01-.07 under COMAR 21.05.12, and Regulations .01-.06 under Regulations 21.06.09. This action was considered at a Board of Public Works meeting held on July 27, 2016

Statement of Purpose

The purpose of this action is to update the Code of Maryland Regulations for State Procurement (Title 21). Revisions include: corrections to outdated or invalid terminology, references, and typographical errors; clarifications of the scope or requirements of specific regulations to prevent inconsistent interpretations or applications of those regulations; revisions to coincide with recent statutory changes; moving the chapter for Procurement of Human, Social, Cultural, and Educational Services under Subtitle 5, Procurement Methods and Project Delivery Methods; standardization of practices for power of attorney with respect to bid bonds; clarification of the counting of vendors certified as both Veteran-owned Small Business Enterprises (VSBE) and Minority Business Enterprises (MBE) towards MBE and VSBE goals; and the implementation of regulations for contract invoicing, payment, and interest on late payments.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

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 Gabriel Gnall, Procurement Advisor, Board of Public Works, 80 Calvert Street, Annapolis, MD 21401, or call 410-260-7335, or email to gabrial.gnall@maryland.gov, or fax to 410-974-5240. Comments will be accepted through October 29, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 17

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

N/A

E. If these regulations have no economic impact under Part A, indicate reason briefly: There will be minimal or no economic impact since the amendments are clarifications, corrections, or moderate changes to State procurement processes.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

There will be minimal or no economic impact on small businesses since the amendments are clarifications, corrections, or moderate changes to State procurement processes.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries are State agencies and the vendor community. These amendments should result in more effective procurement processes as well as more prompt payments to State contractors.

1b. Intended Beneficiaries: Households.

N/A

1c. Intended Beneficiaries: Businesses.

State contractors should benefit from the new chapter, COMAR 21.06.09, regarding

Invoicing, Payment, and Interest on Late Payments via more prompt processing of vendor invoices and payments to vendors by State agencies.

2a. Other Direct or Indirect Impacts: Adverse.

N/A

2b. Other Direct or Indirect Impacts: Positive.

State agency procurement personnel should benefit from more effective procurement processes via updates, clarifications, and additions to the State procurement regulations.

3. Long-Term Impacts.

N/A

4. Estimates of Economic Impact.

N/A

Attached Document:

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 01 GENERAL PROVISIONS

Chapter 02 Terminology

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

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (34) (text unchanged)

(35) "Educational services" means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, [or] Juvenile [Justice] *Services*, [the Office for Individuals with] Disabilities, or [the Office on] Aging in order to provide training directly to third-party clients under a contract the primary purpose of which is the direct provision of educational services.

(36) – (46) (text unchanged)

(47) "Human services" means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, Juvenile [Justice] *Services, Disabilities*, or [the Office on] Aging in order to provide support, care, or shelter directly to third-party clients under a contract the primary purpose of which is the direct provision of these services.

(47-1) – (81) (text unchanged)

(82) "Social services" means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, Juvenile [Justice] *Services*, [the Office for Individuals with] Disabilities, or [the Office on] Aging in order to provide support, care, or shelter directly to third-party clients under a contract the primary purpose of which is the direct provision of social services.

(83) – (98) (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 14 PROCUREMENT OF HUMAN, SOCIAL, CULTURAL, AND EDUCATIONAL SERVICES

Chapter 01 General Regulations

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

.05 Solicitation Requirement for Human and Social Services.

A. This regulation applies to solicitations for human and social services by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the [Office for Individuals with] *Department of Disabilities*, and the Department of Aging.

B. The solicitation shall:

(1) Explicitly refer to any applicable program standards adopted by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the [Office for Individuals with] *Department of Disabilities*, or the Department of Aging;

(2) – (3) (text unchanged)

C. – D. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 02 STATE PROCUREMENT ORGANIZATION

Chapter 01 Board of Public Works

Authority: State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, and 13-108; Education Article, §§14-204, 14-205, and 14-405; Article 41, §§4-104.1 and 4-104.2; Annotated Code of Maryland; Chapter 471, 1991 Laws of Maryland; Chapter 608, Acts of 1999

.04 Delegation of Procurement and Contracting Authority.

A. (text unchanged)

(1) The Board hereby delegates authority to the Secretary of Budget and Management for approval of the award of the following procurement contracts within the Department's jurisdiction:

(a) Service contracts, except architectural and engineering contracts, in the amount of \$200,000 or less;

(b) Contract modifications that:

(i) Do not materially change the scope of the original contract;

(ii) Individually do not change the amount of the contract, or any cost component of the contract, by more than \$50,000; or

(iii) Exercise by a using agency a contract option of \$200,000 or less;

(c) Contracts in the amount of \$100,000 or less resulting from sole source procurements submitted by using agencies, as permitted by Department of Budget and Management regulations approved by the Board; and

(d) Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received.

(e) *Contracts in the amount of \$200,000 or less for rental vehicles supplied to using agencies, in accordance with COMAR 21.02.03.04*

(2) (text unchanged)

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) – (7) (text unchanged)

(8) All [Contracts] *contracts* for the purchase of [all] commodities and supplies, except for contracts for single items of equipment or single equipment leases in an amount over \$200,000;

(9) – (10) (text unchanged)

C. – J. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 02 STATE PROCUREMENT ORGANIZATION

Chapter 03 Department of Budget and Management

Authority: State Finance and Procurement Article, §§3-405, 3-502, 12-101, 12-107, 13-103, 13-104, 13-107.1, and 13-111, Annotated Code of Maryland

.02 Review and Approval of Solicitations and Contracts for Services [and Information Technology].

A. Purpose. This regulation sets forth general requirements for the review and approval by the Department of Budget and Management of State agency procurements of services [or information technology].

B. Application.

(1) Except as provided in §B(3) of this regulation, this chapter applies to solicitations, contracts, and contract modifications to existing contracts issued by State agencies funded from any source (including nonbudgeted funds and reimbursable funds), which may be used to subsidize, purchase, lease, or otherwise procure contractual services [and information technology].

(2) The Secretary or the Secretary's designee may specifically approve sole source contracts for services [and information technology] in the amount of \$100,000 or less when the:

(a) – (b) (text unchanged)

(3) – (4) (text unchanged)

(5) These regulations apply to all actions of State agencies to procure any services [or information technology.]

(6) (text unchanged)

C. Policies and Procedures—Service Contracts and Information Technology Contracts.

(1) In accordance with statute and this chapter, State agencies may issue solicitations and enter into contracts with a value of \$100,000 or less without prior concurrence of the Department of Budget and Management, if all of the following conditions are met:

(a) (text unchanged)

[(b) For technology requests, the agency has filed an annual information technology project request (ITPR), or other documents or procedures as may be prescribed by DBM, to obtain information technology equipment, software, peripherals, and associated services;]

[(c)] (b) There is provision in the agency's approved budget or supporting documents for the proposed expenditure and the cumulative cost of this and previously approved contracts relating to the budget line item do not exceed the budgetary provision;

[(d)] (c) For each solicitation and contract action requiring DBM or BPW approval, the agency submits materials as required by DBM or the BPW, or both;

[(e)] (d) At least two responses (excluding any "no bid" responses) have been received;

[(f)] (e) Funds for services, or supplies to be obtained, were not specifically deleted by the Governor or the General Assembly from the agency's budget;

[(g)] (f) The agency's approved plan for authority to contract without the Department of Budget and Management concurrence has not been withdrawn; and

[(h)] (g) The agency completes, files with the contract, and retains for audit purposes forms prescribed by the Secretary, documenting compliance with these provisions.

(2) – (8) (text unchanged)

D. (text unchanged)

.03 Procurement, Repair, and Maintenance of State-Owned Motor Vehicles.

A. (text unchanged)

B. Policies and Procedures

(1) Acquisition of Vehicles.

(a) – (c) (text unchanged)

(d) [Except as provided in COMAR 21.02.01.04D(6)(a)(i), prior] *Prior* to purchase, each vehicle acquisition shall be reviewed and approved by the Secretary or designee for certification of funding authorization and for compliance with standards. Actual purchase shall be made by the Department of General Services.

(2) – (3) (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 04 SPECIFICATIONS

Chapter 01 General Policies

Authority: State Finance and Procurement Article, §§12-101 and 13-205, Annotated Code of Maryland

.03 Responsibility for Preparation.

The using agency is responsible for preparing the specifications. The procuring agency shall require contractor compliance with State [Government Article, §15-508] *Finance and Procurement Article §13-212.1*, Annotated Code of Maryland. To the extent practicable, functional or performance criteria shall be emphasized while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State.

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

Chapter 05 Sole Source Procurement

Authority: State Finance and Procurement Article, §§12-101 and 13-107, Annotated Code of Maryland

.04 Record of Sole Source Procurement.

A. Notice of award shall be published in eMaryland Marketplace by the procurement agency not more than 30 days after the execution and approval of the contract. *This requirement does not apply to sole source procurements that fall within the small procurement regulations set forth in COMAR 21.05.07.*

B. – C. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

Chapter 08 Mandatory Written Solicitation Requirements

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

.03 Conflict of Interest.

A. (text unchanged)

B. A solicitation that will result in the selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State contract shall provide notice of the requirements of State [Government Article, §15-508] *Finance and Procurement §13-212.1*, Annotated Code of Maryland, and this regulation.

C. – E. (text unchanged)

.04 Minority Business Enterprise Subcontract Participation Goal.

Any solicitation containing an MBE subcontract participation goal, except small procurements made under COMAR 21.05.07, shall include a clause the same as or similar to the following:

A. "An overall MBE subcontract participation goal of ___ percent of the total contract dollar amount, *including all renewal option terms, if any*, has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror [agrees that this dollar amount of the contract will be performed] *acknowledges the overall MBE subcontractor participation goal, and commits to achieving the goal by utilizing certified minority business enterprises[,";] or requests a full or partial waiver of the goal.* "; or

B. "An overall MBE subcontract participation goal of ___ percent of the total contract dollar amount, *including all renewal option terms, if any*, has been established for this procurement. [This dollar amount includes sub-goals of ___ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified by the certification agency as women-owned businesses and ___ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified by the certification agency as African American-owned businesses]. *The overall MBE subcontract participation goal includes the following subgoals, which have been established for this procurement:*

- ___%for African-American MBEs,
- ___%for Asian-American MBEs,
- ___%for Hispanic-American MBEs, and
- ___%for Woman-Owned MBEs.

By submitting a response to this solicitation, the bidder or offeror [agrees that these dollar amounts of the contract shall be performed] *acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, [including the MBE classifications specified herein] or requests a full or partial waiver of the overall goal and subgoals.*"

.07 Bid/Proposal Affidavit.

A. – B. (text unchanged)

BID/PROPOSAL AFFIDAVIT

A. (text unchanged)

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, *sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test*, [or on the basis of] disability, or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. – N. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 07 CONTRACT TERMS AND CONDITIONS

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

Authority: State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 16-202, 17-401, 17-402, and 19-114; Election Law Article, §§14-101—14-108; and State Government Article, §§15-502 and 15-503; Annotated Code of Maryland

.08 Nondiscrimination in Employment.

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

"The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, *sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics*, or disability of a qualified individual with a disability *unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test*; (b) to include a provision similar to that contained in subsection (a), above, in any *underlying* subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

.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 after 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*[, other than] 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[, are prohibited]."

.20 Political Contribution Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with [Election Law Article, §§14-101—14-108, Annotated Code of Maryland] *Md. Code Ann., Election Law Article, title 14*, which requires that every person that enters into [contracts, leases, or other

agreements] *a procurement contract* with the State, a county, or [an incorporated municipality] *a municipal corporation, or other political subdivision of the State*, [or their agencies,] during a calendar year in which the person receives *a contract with a governmental entity* in the [aggregate] *amount of* [\$100,000] *\$200,000* or more, shall file with the State Board of Elections [a] statements disclosing: (a) *any contributions [in excess of \$500] made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period.* The statement shall be filed with the State Board of Elections: [(1)] (a) before [a purchase or] execution of a [lease or] contract by the State, a county, [an incorporated municipality, or their agencies] *a municipal corporation, or other political subdivision of the State*, and shall cover the [preceding two calendar years] *24 months prior to when a contract was awarded; and [(2)] (b) if the contribution is made after the execution of a [lease or] contract, then twice a year, throughout the contract term, on or before: [(a)] (i) [February 5] May 31, to cover the [6-] six (6) month period ending [January 31] April 30; and [(b)] (ii) [August 5] November 30, to cover the [6-] six (6) month period ending [July 31] October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html."*

.25 Contract Affidavit.

A. – C. (text unchanged)

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION
I FURTHER AFFIRM THAT:**

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

.26 Commercial Nondiscrimination Clause.

A. The following provision is mandatory for all State contracts and subcontracts: "As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, *sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of* disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 06 CONTRACT FORMATION AND AWARD

Chapter 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

.09 Bid Security.

A. – C. (text unchanged)

D. Forms of Bid Bonds.

(1) – (3) (text unchanged)

(4) *Authenticity and Enforceability of Powers of Attorney.*

(a) *Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.*

(b) *An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.*

(c) *For purposes of this section, verified electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.*

(d) *The procurement officer shall:*

(i) *Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and*

(ii) *Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.*

(e) *If the procurement officer contacts the surety to validate the power of attorney, the contracting officer shall document the file providing, at a minimum, the following information:*

(i) *Name of person contacted.*

(ii) *Date and time of contact.*

(iii) *Response of the surety.*

(f) *If, upon investigation, the surety declares the power of attorney to have been valid at the time of bid opening, the procurement officer may require correction of any technical error with the power of attorney.*

(g) *If, upon investigation, the surety declares the power of attorney to have been invalid, the procurement officer shall determine the bid to be nonresponsive and not allow the bidder to substitute a replacement power of attorney or a replacement surety.*

.10 Performance and Payment Bonds.

A. Performance Bonds

(1) *General. A performance bond is required for all construction contracts in excess of \$100,000 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 \$50,000, 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. – C. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 06 CONTRACT FORMATION AND AWARD

Chapter 09 Invoicing, Payment, and Interest on Late Payments

Authority: State Finance and Procurement Article, §§15-101, 15-102, 15-103, 15-104, 15-105

ALL NEW

.01 Definitions.

For the purposes of this chapter:

A. *“Late Payment” means any amount that is due and payable by law under a written procurement contract, without deferral, delay, or set-off under COMAR 21.02.07.03, and remains unpaid more than 45 days after an agency receives a Proper Invoice.*

B. *“Payment” includes all required processing and authorization by the Comptroller of the Treasury, as provided under COMAR 21.02.07, and may be deferred, delayed, or set-off as applicable under COMAR 21.02.07.03.*

C. *“Proper Invoice” means a bill, written document, or electronic transmission, readable by the agency, provided by a vendor requesting an amount that is due and payable by law under a written procurement contract for property received or services rendered that meets the requirements of Regulation .02 of this Chapter.*

.02 Required Invoice Documentation.

A Proper Invoice, required as Payment documentation, must include the following information, without error:

A. *The contractor's federal employer's identification number or Social Security number;*

B. *The procurement contract or purchase order number or another adequate description of the procurement contract; and*

C. Any documentation required by regulation or the procurement contract.

.03 Receipt of Invoices.

For the purposes of determining a Payment due date and the date on which interest will begin to accrue if a Payment is late, an invoice shall be deemed to be received:

- A. For invoices that are mailed, when a Proper Invoice is received by the agency, as of the date the agency annotates the invoice with the date and time of receipt; or
- B. For invoices electronically transmitted, on the date the transmission is received by the agency, or the next business day if received after 5 p.m. Eastern Time.

.04 Review of Invoices.

Upon receipt of an invoice, an agency shall use the following procedures:

- A. Each invoice will be reviewed by the agency as soon as practicable after receipt, but no later than 5 business days after receipt, to determine whether the invoice is a Proper Invoice as defined in regulation .01 of this chapter.
- B. When the agency receives the invoice, the agency shall mark the invoice with the date the invoice was received.
- C. Once the agency determines the invoice is proper, the agency shall submit the invoice to the Comptroller for Payment within one business day after the determination.
- D. If an agency determines the invoice is not a Proper Invoice, the agency shall notify the vendor of all defects that prevent processing and specify all reasons why the invoice is not proper within two business days after the determination. It is the responsibility of the vendor to submit a corrected invoice.
- E. Media which produce tangible recordings of information may be used by agencies to expedite the Payment process, rather than delaying the process by requiring original paper documents. Agencies shall provide adequate safeguards and controls to ensure the integrity of the data and to prevent duplicate processing.
- F. Failure to comply with this Regulation does not constitute a "Late Payment" as that term is defined in this Chapter.

.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 thirty days:

- (1) After the day on which the Payment becomes due under the procurement contract; or
- (2) If later, after the day on which the agency receives a Proper Invoice.

B. Payment will be considered to be made on the settlement date for an electronic funds transfer payment or the mailing date of the check for a check Payment.

C. Payments falling due on a weekend, State holiday, or federal holiday may be made on the following business day without incurring Late Payment interest penalties.

.06 Interest on Late Payments.

A. The State shall pay interest on Late Payments as defined in Regulation .01 of this chapter at the rate of 9% per annum if:

- (1) The vendor 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.

B. 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.

END ALL NEW

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 07 CONTRACT TERMS AND CONDITIONS

Chapter 02 Mandatory Construction Contract Clauses

Authority: State Finance and Procurement Article, §§12-101, 13-216, 13-218, and 13-225, Annotated Code of Maryland

.04 Suspension of Work.

Mandatory provision for all construction contracts:

"Suspension of Work

"(1) (text unchanged)

"(2) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for

any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault [of] *or* negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this contract.

"(3) (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

Chapter 03 Minority Business Enterprise Policies

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

.09 Definitions.

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; or

(2) The contract has been designated as a procurement to be made without any certified MBE participation goals [pursuant to Regulation .01F of this chapter].

B. – G. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

Chapter 09 Vending Facilities on Property Controlled by Department of General Services

Authority: State Finance and Procurement Article, §14-109; Education Article, §§21-301—21-303; Annotated Code of Maryland

.01 Definitions

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "*Cost of Goods Sold*" means the inventory cost of the products sold.

[(2)] (3) "Department" means the Department of General Services.

[(3)] (4) "Division" means the Division of Rehabilitation Services of the State Department of Education.

[(4)] (5) "Licensed blind vendor" means a blind person who has been licensed by the Division to operate a vending facility on federal, State, or other property.

[(5)] (6) "Occupant" means any State agency, board, commission, institution, or commercial concession which occupies space within property controlled by the Department.

[(6)] (7) "Program" means the Maryland Vending Program for the Blind.

[(7)] (8) "Property controlled by the Department" means any buildings, land, or other real property owned or leased by the State which is managed by Department personnel.

(9) "*Reasonable services and maintenance costs in accordance with customary business practices*" means personnel and repair costs, including equipment and transportation costs, taxes, overhead and administration costs and commercial vendor profits.

(10) "*Receipts*" means payments made to the program by a commercial vending company which operates services and maintains vending machines on property controlled by the property managing agency

[(8)] (11) "Vending facility" means vending machines, cafeterias, snack bars, and other concession stands for the sale of foods, beverages, newspapers, periodicals, confections, tobacco products, and other merchandise including the sale or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

[(9)] (12) "Vending machine" means a currency-operated machine that dispenses products or services.

[(10)] (13) "Vending machine income" means: *receipts, other than those of a licensed blind vendor, from vending machine operations on property controlled by the Department after deducting costs of goods sold, including*

reasonable service and maintenance costs in accordance with customary business practices [commissions paid by a commercial vending concern which operates, services, and maintains vending machines on property controlled by the Department].

.02 Priority.

A. – B. (text unchanged)

[C. If a property controlled by the Department already has vending facilities which are not operated by the Program, the priority in §B of this regulation is waived until the earlier of:

(1) The first expiration of a contract between the operator of the vending facility and the Department or any of its occupants; or

(2) June 1, 1994.]

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

Chapter 13 Veteran-Owned Small Business Enterprises

Authority: Chs. 507 and 508, Acts of 2010

.02 Definitions

A. (text unchanged)

B. Terms Defined.

(1) "Directory" means the veteran small business directory maintained by the Center for [Veterans Enterprise] *Verification and Evaluation* of the United States Department of Veterans Affairs.

(2) "Veteran-Owned Small Business Enterprise (VSBE)" means a business that is verified by the Center for [Veterans Enterprise] *Verification and Evaluation* of the United States Department of Veterans Affairs as a veteran-owned small business.

.05 Procurement Solicitations.

A. – B. (text unchanged)

C. VSBE Subcontracting Provisions.

(1) Solicitation Content. The solicitation shall contain provisions requiring bidders or offerors to:

(a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;

(b) Solicit VSBEs before bids or proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;

(c) Attempt to make personal contact with the VSBEs solicited and to document these attempts;

(d) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and

(e) Attempt to attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.

(2) *If a solicitation contains an MBE goal and a VSBE goal, participation by a subcontractor dually-certified as an MBE and a VSBE may be counted toward meeting both the MBE and VSBE contract goals to the extent its participation meets the cumulative MBE and VSBE contract goals, or portions thereof that it is committed to perform.*

(3) *Participation by a dually-certified subcontractor may be counted toward the agency's overall MBE and VSBE goals.*

[(3)] (4) On forms provided by the procurement agency, a bidder or offeror shall submit with its bid or proposal:

(a) A completed VSBE utilization affidavit including either an agreement to meet the certified VSBE participation goal or a request for a full or partial waiver; and

(b) A completed VSBE participation schedule that identifies the veteran-owned small business that the bidder or offeror agrees to utilize in the performance of the contract and the percentage of contract value attributed to each VSBE.

[(4)] (5) The VSBE participation schedule shall:

(a) Include the name of each VSBE that will participate in the project; and

(b) Include the percentage of the contract to be paid to each VSBE for the work or supply.

[(5)] (6) The failure of a bidder to accurately complete and submit the VSBE utilization affidavit and participation schedule may result in a determination that the bid is not responsive.

[(6)] (7) The failure of an offeror to accurately complete and submit the VSBE utilization affidavit and the VSBE participation schedule may result in a determination that the proposal is not susceptible of being selected for award.

[(7)] (8) The names of prime contractors requesting or purchasing solicitation documents for construction contracts shall be made available on request to any VSBE whose specialty suggests an interest in subcontracting.

[(8)] (9) Each prime contractor given solicitation documents as part of a procurement with an VSBE goal shall be given the web address for the electronic version of the directory for purposes of soliciting subcontract quotations, bids, or offers from VSBEs.

D. Counting Prime Participation Toward Overall and Contract Goals

(1) A procurement agency may count a prime contractor dually-certified as an MBE and a VSBE toward the agency's overall VSBE and MBE goals.

(2) A procurement agency may count the distinct, clearly defined portion of the work of the contract that a VSBE certified prime performs with its own work force toward meeting up to 100 percent of the contract's VSBE goal.

[D.] (E.) Direct Solicitation. As part of the solicitation process being employed for the business community in general, and in addition to the public notice requirements of COMAR 21.05.02.04 and 21.05.03.02B, a procurement agency shall send a copy of the solicitation or notice of the solicitation, or both, to a sufficient number of VSBEs listed in the directory, as determined by the procurement officer, as is likely to result in VSBE responses to the solicitation.

[E.] (F.) Notification. Except for sole source, small, and emergency procurements, a copy of the solicitation notice for each procurement with an VSBE goal may be sent in an electronic format to the Maryland Department of Veterans Affairs for distribution to the appropriate veteran and small business assistance agencies and trade organizations.

[F.] (G.) Prebid and Preproposal Conferences. When prebid or preproposal conferences are held, the procurement agency shall explain the VSBE subcontracting goal if applicable, the VSBE provisions of the solicitation, the documentation required, and its relationship to the determinations that will be made in connection with the evaluation process.

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES

Chapter 04 Department of General Services; A/E Services Exceeding \$200,000

Authority: State Finance and Procurement Article, §§13-304 and 13-314, Annotated Code of Maryland

.10 Solicitation of Interest for Individual Projects.

A. – B. (text unchanged)

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form [254] 330, [Architect/Engineer and Related Services Questionnaire] *Architect-Engineer Qualifications* [(SF-254)] (SF-330), that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation, the following:

(a) A copy of the list of all architectural/engineering firms that have expressed interest in the project and have met the requirements of §C(1) of this regulation;

(b) A request for U.S. Government Standard Form [255] 330, *Architect-Engineer Qualifications* [and Related Services Questionnaire for Specific Project (SF-255)] (SF-330).

(c) – (f) (text unchanged)

.10-1 Solicitation of Interest for Indefinite Quantity Contracts.

A. – B. (text unchanged)

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form [254] 330, [Architect/Engineer and Related Services Questionnaire (SF-254)] *Architect-Engineer Qualifications* (SF-330), that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation the following:

(a) (text unchanged)

(b) A request for U.S. Government Standard Form [255, Architect/Engineer and Related Services Questionnaire for Specific Project (SF-255)] 330, *Architect-Engineer Qualifications* (SF-330);

(c) – (f) (text unchanged)

D. (text unchanged)

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES

Chapter 05 Department of General Services A/E Services \$[1]200,000 or Less

Authority: State Finance and Procurement Article, §13-304, Annotated Code of Maryland

.01 General.

Architectural and engineering service contracts costing \$[1]200,000 or less awarded through the Department of General Services result from solicitations made by the Director, Office of Engineering and Construction, in the Department of General Services. The firms to be included on the candidate list shall be determined by the Department of General Services Qualification Committee, which shall consider information on each firm's SF-[254]330 and supplement to the SF-[254]330, recommendations from the using agency requesting the services, and letter of interest submitted by architects and engineers. The Director, Office of Engineering and Construction, shall review the candidate list, modify it as necessary to provide opportunity for minority businesses to participate in the solicitation, and determine the firms to be included on the reduced candidate list. The Director of the Office of Engineering and Construction shall solicit price proposals and, when appropriate, technical proposals from the firms on the reduced candidate list. The proposals submitted by the solicited firms shall be reviewed by staff designated by the Director, Office of Engineering and Construction. The staff shall make an appointment recommendation to the Director, Office of Engineering and Construction, who shall make a recommendation for appointment to the Secretary, Department of General Services. If the Secretary concurs with the recommendation, [he] *the Secretary* shall approve the award of the contract and report that action in accordance with COMAR 21.02.01.04B(3) and 21.02.01.05B(1).

[Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 14 PROCUREMENT OF HUMAN, SOCIAL, CULTURAL, AND EDUCATIONAL SERVICES

Chapter 01 General Regulations

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

.01 Scope.

This chapter applies to procurements of human, social, cultural, and educational services.

.02 Notice of Certain Contracts.

A. Locally Funded Contracts.

(1) This section applies to a solicitation for a contract to provide human, social, cultural, or educational services if the contract is to be funded in part by a county or by Baltimore City under a legislative mandate or prior agreement.

(2) Not later than the date the solicitation is publicly available, the procurement officer shall send a copy of it to the chief elected official, or designee, of the funding jurisdiction for review and comment. The procurement officer shall request the funding jurisdiction to provide its written comments within 30 days.

(3) The procurement officer may not award the contract without considering timely funding jurisdiction comments, if any, submitted pursuant to §A(2) of this regulation. The procurement officer shall make a determination with respect to any timely funding jurisdiction comments that are not to be implemented.

B. Contracts with Government Entities.

(1) This section applies to any award, renewal, or extension of a human, social, or educational services contract with a State agency, a political subdivision of the State, or other government, that results in a total contract price of more than \$25,000.

(2) The procurement agency shall give notice in eMaryland Marketplace of the contract award, extension, or renewal, not more than 30 days after the approval and execution of the contract, extension, or renewal.

.03 Procurement Methods.

A. Competitive sealed proposals under COMAR 21.05.03 is the preferred method for procuring human, social, cultural, and educational services.

B. Human, social, cultural, and educational services may be procured in accordance with the competitive sealed bidding procurement method, COMAR 21.05.02.

C. Human, social, cultural, and educational services of \$25,000 or less may be procured in accordance with the small procurement method, COMAR 21.05.07.

D. Human, social, cultural, and educational services may be procured in accordance with the sole source procurement method, COMAR 21.05.05, for the purpose of a demonstration project, or in accordance with COMAR 21.05.05.02A or Regulation .06C of this chapter.

E. Human, social, cultural, and educational services may be procured in accordance with the emergency procurement method, COMAR 21.05.06, for the reasons specified in COMAR 21.05.06.02, or when an unforeseeable condition that seriously threatens the health, safety, or general welfare of third-party clients causes an immediate and serious need that cannot be met through other procurement methods.

F. Repealed.

G. Human, social, and educational services may be procured in accordance with the noncompetitive negotiation procurement method, Regulation .04 of this chapter.

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

A. Only human, social, or educational services may be procured by this method.

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

(1) The procurement officer, with the approval of the agency head, 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) The procurement is to obtain one of the following services:

(a) An employer in a program of on the job training for employment and training purposes;

(b) Group foster care services for children or adults under a negotiated rate system adopted by regulation; or

(c) The following services for the mentally ill:

(i) Residential rehabilitation services,

(ii) Community rehabilitation services (psychosocial), or

(iii) Therapeutic group home services for children and adolescents.

C. Public Notice.

(1) At least 10 days before general expressions of interest are due, the procurement agency shall give public notice of its general requirements for services and request interested service providers to respond with written general expressions of interest.

(2) Public notice of any request for expressions of interest shall:

(a) Be sent to known potential providers; and

(b) Be sent to interested advocacy organizations.

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

D. As a need for the services arises, the procurement officer may:

(1) Conduct discussions with one or more responsible service providers that previously submitted an expression of interest; and

(2) Award a contract to a provider if the procurement agency head, on the basis of discussions or past experience with the provider, determines that an award will be in the State's best interest.

E. As far as practicable in the course of a particular noncompetitive negotiated procurement, the procurement officer shall give responsible service providers that submitted acceptable or potentially acceptable expressions of interest fair and equal treatment with respect to discussions.

F. Notice of any award, regardless of amount, under this regulation shall be published in eMaryland Marketplace.

.05 Solicitation Requirements for Human and Social Services.

A. This regulation applies to solicitations for human and social services by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Office for Individuals with Disabilities, and the Department of Aging.

B. The solicitation shall:

(1) Explicitly refer to any applicable program standards adopted by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Office for Individuals with Disabilities, or the Department of Aging;

(2) Require each offering provider to indicate how it has or will meet these standards; and

(3) Indicate that the contractor shall meet these standards before it provides any services under the contract.

C. Solicitation selection criteria shall include, as applicable, minimum qualifications of providers, minimum qualifications of program staff, minimum facility standards, past performance, and general program and fiscal accountability standards.

D. The solicitation shall, where relevant, request information concerning providers' proposals for easing any transition for third-party clients from the former provider to the offering provider and from the offering provider to a later provider.

.06 Multi-Year and Sole Source Human and Social Services Contracts-----Assurance of Continuity of Third-Party Client Care.

A. This regulation applies to contracts for human and social services and, in addition to other regulations, authorizes multi-year and sole source contracts.

B. Multi-Year Contracts.

(1) In order to assure continuity of human or social services care, a procurement agency may enter a multi-year contract for human or social services when:

(a) The conditions in COMAR 21.06.03.09 are met; or

(b) The procurement officer, with the approval of the agency head, determines that it is not reasonable to expect that a contract for a single fiscal year will be sufficient to alleviate the conditions for which a group of third-party clients will receive the services.

(2) The procurement officer shall follow the procedures required by COMAR 21.06.03.09D.

(3) A multi-year contract, including any option periods, may extend for more than 3 years only with the prior express approval of the Board of Public Works.

C. Sole Source Contracts.

(1) In order to provide continuity of human or social services care to current third-party clients, the procurement officer shall, before the contract with the current provider expires, attempt to negotiate a sole source contract with the current provider if:

(a) A sole source contract with the current provider is authorized under COMAR 21.05.05.02A; or

(b) Based on an assessment by a licensed or certified health practitioner, the head of a funding unit determines that a change in the human or social services provider would have a detrimental impact on those clients currently being served by the provider. The licensed or certified health practitioner shall be a psychologist, social worker, physician, nurse, or qualified developmental disabilities professional (QDDP), as defined in COMAR 10.22.03.01B(25), and:

(i) May be employed by the procurement agency; but

(ii) May not be employed by the provider that has the human or social services contract with the procurement agency for the third-party clients.

(2) Before issuing a solicitation for services to be provided to current third-party clients, the procurement officer shall:

(a) Decide whether a sole source contract will be negotiated for any of these current clients under §C(1) of this regulation;

(b) Exclude from the solicitation any current third-party client for whom a sole source contract has been negotiated; and

(c) Include in the solicitation a notice of any current sole source contract negotiations for current third-party clients, and a statement that these clients might not be included in any contract resulting from the solicitation.

.07 Approvals.

A. Pursuant to COMAR 21.02.01.05A(1), the Board of Public Works shall review and approve an award of a human, social, cultural, or educational services contract for more than \$200,000 before the contract is executed, unless the contract results from an emergency procurement.

B. Pursuant to COMAR 21.02.01.04A, the Department of Budget and Management shall review and approve an award of a human, social, cultural, or educational services contract for \$200,000 or less before the contract is executed, unless the contract results from an emergency procurement, a procurement under COMAR 21.02.03.02C, or a small procurement.

C. A human, social, cultural, or educational services contract resulting from an emergency or COMAR 21.02.03.02C procurement shall be reported as provided in COMAR 21.02.01.05A(3)(a) or .05B, as applicable.]

Repealed

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

Chapter 01 General Provisions

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

.01 Methods of Source Selection.

Unless otherwise authorized by law, all State procurement contracts shall be awarded by one of the following methods:

- A. Competitive sealed bidding;
- B. Competitive sealed proposals;
- C. Negotiated award after unsatisfactory competitive sealed bidding;
- D. Noncompetitive negotiations:
 - (1) Sole source,
 - (2) Emergency and expedited;
- E. Small procurement procedures;
- F. Noncompetitive negotiated procurement under COMAR [21.14.01.04] 21.05.12.04; or
- G. Intergovernmental cooperative purchasing under COMAR 21.05.09.

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 05 PROCUREMENT METHODS AND PROJECT DELIVERY METHODS

Chapter 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

ALL NEW

.01 Scope.

This chapter applies to procurements of human, social, cultural, and educational services.

.02 Notice of Certain Contracts.

A. Locally Funded Contracts.

(1) This section applies to a solicitation for a contract to provide human, social, cultural, or educational services if the contract is to be funded in part by a county or by Baltimore City under a legislative mandate or prior agreement.

(2) Not later than the date the solicitation is publicly available, the procurement officer shall send a copy of it to the chief elected official, or designee, of the funding jurisdiction for review and comment. The procurement officer shall request the funding jurisdiction to provide its written comments within 30 days.

(3) The procurement officer may not award the contract without considering timely funding jurisdiction comments, if any, submitted pursuant to §A(2) of this regulation. The procurement officer shall make a determination with respect to any timely funding jurisdiction comments that are not to be implemented.

B. Contracts with Government Entities.

(1) This section applies to any award, renewal, or extension of a human, social, or educational services contract with a State agency, a political subdivision of the State, or other government, that results in a total contract price of more than \$25,000.

(2) The procurement agency shall give notice in eMaryland Marketplace of the contract award, extension, or renewal, not more than 30 days after the approval and execution of the contract, extension, or renewal.

.03 Procurement Methods.

A. Competitive sealed proposals under COMAR 21.05.03 is the preferred method for procuring human, social, cultural, and educational services.

B. Human, social, cultural, and educational services may be procured in accordance with the competitive sealed bidding procurement method, COMAR 21.05.02.

C. Human, social, cultural, and educational services of \$25,000 or less may be procured in accordance with the small procurement method, COMAR 21.05.07.

D. Human, social, cultural, and educational services may be procured in accordance with the sole source procurement method, COMAR 21.05.05, for the purpose of a demonstration project, or in accordance with COMAR 21.05.05.02A or Regulation .06C of this chapter.

E. Human, social, cultural, and educational services may be procured in accordance with the emergency procurement method, COMAR 21.05.06, for the reasons specified in COMAR 21.05.06.02, or when an unforeseeable condition that seriously threatens the health, safety, or general welfare of third-party clients causes an immediate and serious need that cannot be met through other procurement methods.

F. Human, social, and educational services may be procured in accordance with the noncompetitive negotiation procurement method, Regulation .04 of this chapter.

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

- A. Only human, social, or educational services may be procured by this method.
- B. The noncompetitive negotiated procurement method may be used if:
- (1) The procurement officer, with the approval of the agency head, 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) The procurement is to obtain one of the following services:
 - (a) An employer in a program of on the job training for employment and training purposes;
 - (b) Group foster care services for children or adults under a negotiated rate system adopted by regulation; or
 - (c) The following services for the mentally ill:
 - (i) Residential rehabilitation services,
 - (ii) Community rehabilitation services (psychosocial), or
 - (iii) Therapeutic group home services for children and adolescents.
- C. Public Notice.
- (1) At least 10 days before general expressions of interest are due, the procurement agency shall give public notice of its general requirements for services and request interested service providers to respond with written general expressions of interest.
 - (2) Public notice of any request for expressions of interest shall:
 - (a) Be sent to known potential providers; and
 - (b) Be sent to interested advocacy organizations.
 - (3) If the procurement agency expects that any contract may exceed \$25,000, the request for general expressions of interest shall so state and shall be published in eMaryland Marketplace.
- D. As a need for the services arises, the procurement officer may:
- (1) Conduct discussions with one or more responsible service providers that previously submitted an expression of interest; and
 - (2) Award a contract to a provider if the procurement agency head, on the basis of discussions or past experience with the provider, determines that an award will be in the State's best interest.
- E. As far as practicable in the course of a particular noncompetitive negotiated procurement, the procurement officer shall give responsible service providers that submitted acceptable or potentially acceptable expressions of interest fair and equal treatment with respect to discussions.
- F. Notice of any award, regardless of amount, under this regulation shall be published in eMaryland Marketplace.

.05 Solicitation Requirements for Human and Social Services.

- A. This regulation applies to solicitations for human and social services by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Department of Disabilities, and the Department of Aging.
- B. The solicitation shall:
- (1) Explicitly refer to any applicable program standards adopted by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Department of Disabilities, or the Department of Aging;
 - (2) Require each offering provider to indicate how it has or will meet these standards; and
 - (3) Indicate that the contractor shall meet these standards before it provides any services under the contract.
- C. Solicitation selection criteria shall include, as applicable, minimum qualifications of providers, minimum qualifications of program staff, minimum facility standards, past performance, and general program and fiscal accountability standards.
- D. The solicitation shall, where relevant, request information concerning providers' proposals for easing any transition for third-party clients from the former provider to the offering provider and from the offering provider to a later provider.

.06 Multi-Year and Sole Source Human and Social Services Contracts-----Assurance of Continuity of Third-Party Client Care.

- A. This regulation applies to contracts for human and social services and, in addition to other regulations, authorizes multi-year and sole source contracts.
- B. Multi-Year Contracts.
- (1) In order to assure continuity of human or social services care, a procurement agency may enter a multi-year contract for human or social services when:
 - (a) The conditions in COMAR 21.06.03.09 are met; or
 - (b) The procurement officer, with the approval of the agency head, determines that it is not reasonable to expect that a contract for a single fiscal year will be sufficient to alleviate the conditions for which a group of third-party clients will receive the services.
 - (2) The procurement officer shall follow the procedures required by COMAR 21.06.03.09D.
 - (3) A multi-year contract, including any option periods, may extend for more than 3 years only with the prior express approval of the Board of Public Works.
- C. Sole Source Contracts.

(1) In order to provide continuity of human or social services care to current third-party clients, the procurement officer shall, before the contract with the current provider expires, attempt to negotiate a sole source contract with the current provider if:

(a) A sole source contract with the current provider is authorized under COMAR 21.05.05.02A; or

(b) Based on an assessment by a licensed or certified health practitioner, the head of a funding unit determines that a change in the human or social services provider would have a detrimental impact on those clients currently being served by the provider. The licensed or certified health practitioner shall be a psychologist, social worker, physician, nurse, or qualified developmental disabilities professional (QDDP), as defined in COMAR 10.22.03.01B(25), and:

(i) May be employed by the procurement agency; but

(ii) May not be employed by the provider that has the human or social services contract with the procurement agency for the third-party clients.

(2) Before issuing a solicitation for services to be provided to current third-party clients, the procurement officer shall:

(a) Decide whether a sole source contract will be negotiated for any of these current clients under §C(1) of this regulation;

(b) Exclude from the solicitation any current third-party client for whom a sole source contract has been negotiated; and

(c) Include in the solicitation a notice of any current sole source contract negotiations for current third-party clients, and a statement that these clients might not be included in any contract resulting from the solicitation.

.07 Approvals.

A. Pursuant to COMAR 21.02.01.05A(1), the Board of Public Works shall review and approve an award of a human, social, cultural, or educational services contract for more than \$200,000 before the contract is executed, unless the contract results from an emergency procurement.

B. Pursuant to COMAR 21.02.01.04A, the Department of Budget and Management shall review and approve an award of a human, social, cultural, or educational services contract for \$200,000 or less before the contract is executed, unless the contract results from an emergency procurement, a procurement under COMAR 21.02.03.02C, or a small procurement.

C. A human, social, cultural, or educational services contract resulting from an emergency or COMAR 21.02.03.02C procurement shall be reported as provided in COMAR 21.02.01.05A(3)(a) or .05B, as applicable.

End ALL NEW