

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	02/03/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 2/28/2020**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
21	01	02	01
21	01	03	01
21	02	01	03, .04, .05
21	02	03	01, .02, .03, .04, .05
21	02	05	01, .02, .03, .04, .06, .07, .08, .09
21	02	08	01, .02, .03, .04
21	05	01	01, .07
21	05	02	06, .11, .17
21	05	03	02
21	05	09	01, .07
21	05	12	07
21	07	01	11, .29, .30
21	07	02	07
21	07	03	01
21	10	02	02, .04
21	11	01	02, .04, .05
21	11	03	04, .09, .15
21	11	05	07
21	11	13	01
21	13	01	01, .03, .07, .09

**3. Name of Promulgating Authority**

Board of Public Works

**4. Name of Regulations Coordinator**

Lisa Johnson

**Telephone Number**

410-260-7335

**Mailing Address**

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<b>City</b>	<b>State</b>	<b>Zip Code</b>
Annapolis	MD	21401

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lisa.johnson1@maryland.gov

**5. Name of Person to Call About this Document**

Gabriel Gnall

**Telephone No.**

410-260-7335

**Email Address**

gabriel.gnall@maryland.gov

**6. Check applicable items:**

X- New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: December 1, 2019.

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**

X- 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.

X- 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 David Bohannon, General Counsel, (telephone #410-260-7335) on January 28, 2020. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

John Gontrum

**Title**

Executive Secretary

**Telephone No.**

410-260-7335

**Date**

January 28, 2020

**Title 21**

**STATE PROCUREMENT REGULATIONS**

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Authority: State Finance and Procurement Article, §§11-101 and 12-101, Annotated Code of Maryland; Natural Resources Article, §3-103; State Finance and Procurement Article, §§11-201—11-203, 12-101, and 12-104; 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; Education Article, §§14-204, 14-205, and 14-405; State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, 13-108, and 15-112; Annotated Code of Maryland; Ch. 471, Acts of 1991; Ch. 608, Acts of 1999; Ch. 581, Acts of 2016; 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, §§4-204, 12-101, 12-107[(b)(3)], 12-108, 13-103, 13-104, 13-107, and 13-108(a)(1), Annotated Code of Maryland; State Finance and Procurement Article, §§12-101 and 12-105; State Government Article, §10-507; 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; Chs. 633 and 624, Acts of 2018; Ch. 356, Acts of 2019; 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; State Finance and Procurement Article, §§12-101, 13-104, and 13-105, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101, 13-102, and 13-110, Annotated Code of Maryland; Ch. 774, Acts of 2017; State Finance and Procurement Article, §§12-101, 13-102, 13-104, 13-106, 13-108, and 13-109[, and 13-202], Annotated Code of Maryland; Election Law Article, §§14-101—14-108; General Provisions Article, §§5-101 and 5-503; 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; Annotated Code of Maryland; Chs. 588, 589, and 630, Acts of 2017, Ch. 403, Acts of 2019; State Finance and Procurement Article, §§12-101, 13-216, 13-218, [and] 13-225, and 17-801-17-804, Annotated Code of Maryland; Election Law Article, §§14-101—14-108; General Provisions Article, §§5-502—5-503; State Finance and Procurement Article, §§12-101, 13-217—13-219, 13-221, 16-202, 17-401, 17-402; Annotated Code of Maryland; Ch. 630, Acts of 2017; State Finance and Procurement Article, §§12-101 and 15-201—15-223, Annotated Code of Maryland; State Finance and Procurement Article, §§12-101, 14-201—14-208, and 14-501—14-505, Annotated Code of Maryland; Ch. 119, Acts of 2016; 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; Ch. 415, Acts of 2015; Ch. 313, Acts of 2016; Chs. 340 and 438, Acts of 2017; Chs. 335, 336, 481, and 482, Acts of 2018; Ch. 316, Acts of 2019; 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; State Finance and Procurement Article, §§14-601—14-605; Chs. 343 and 344, Acts of 2015; Chs. 708 and 709, Acts of 2017; Election Law Article, §§14-101 and 14-107; State Finance and Procurement Article, §§12-101, 13-207, [14-208,] 14-305, 14-505, 15-110, 15-111, and 17-104; Annotated Code of Maryland; Ch. 6, Acts of 2019

### **Notice of Proposed Action**

[]

The Board of Public Works proposes to 1) Amend Regulation .01B(33) under COMAR 21.01.02, Regulation .03A under COMAR 21.02.01, Regulation .04B under COMAR 21.02.01, Regulation .04C under COMAR 21.02.01, Regulation .04E under COMAR 21.02.01, Regulation .04F under COMAR 21.02.01, Regulation .05A under COMAR 21.02.01, Regulation .05B under COMAR 21.02.01, Regulation .01 under COMAR 21.02.05, Regulation .02 under COMAR 21.02.05, Regulation .03 under COMAR 21.02.05, Regulation .04 under COMAR 21.02.05, COMAR 21.02.08, Regulation .01 under COMAR 21.05.01, Regulation .07 under COMAR 21.05.01, Regulation .06 under COMAR 21.05.02, Regulation .11 under COMAR 21.05.02, Regulation .17 under COMAR 21.05.02, Regulation .02 under COMAR 21.05.03, Regulation .01 under COMAR 21.05.09, Regulation .07 under COMAR 21.05.09, Regulation .07 under COMAR 21.05.12, Regulation .11 under COMAR 21.07.01, Regulation .07 under COMAR 21.07.02, Regulation .01 under COMAR 21.07.03, Regulation .02 under COMAR 21.10.02, Regulation .04 under COMAR 21.10.02, Regulation .02 under COMAR 21.11.01, Regulation .04 under COMAR 21.11.01, Regulation .05 under COMAR 21.11.01, Regulation .04 under COMAR 21.11.03, Regulation .09 under COMAR 21.11.03, Regulation .15 under COMAR 21.11.03, Regulation .07 under COMAR 21.11.05, Regulation .01 under COMAR 21.11.13, Regulation .01 under COMAR 21.13.01, Regulation .03 under COMAR 21.13.01, Regulation .07 under COMAR 21.13.01, Regulation .09 under COMAR 21.13.01; and (2) Adopt New Regulation .01B(16-1) under COMAR 21.01.02, Regulation .01A(35-4) under COMAR

21.01.03, Regulations .06, .07, .08, .09 under COMAR 21.02.05, Regulation .29 under COMAR 21.07.01, Regulation .30 under COMAR 21.07.01; and (3) Repeal Regulations .01B(45), .01B(92) under COMAR 21.01.02, Regulation .04A under COMAR 21.02.01, Regulations .04H, .04J under COMAR 21.02.01, COMAR 21.02.03.

This action was considered at the Board of Public Works meeting held on January 8, 2020.

### **Statement of Purpose**

The purpose of this action is to update the Code of Maryland Regulations for State Procurement (Title 21). Revisions include: updates to reflect changes in State Finance & Procurement Article, and corrections to outdated or invalid terminology, references, or typographical errors;

### **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 [gabriel.gnall@maryland.gov](mailto:gabriel.gnall@maryland.gov), or fax to 410-974-5240. Comments will be accepted through March 30, 2020. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2020

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 since the amendments are clarifications, corrections, or moderate changes to State procurement processes.

G. Small Business Worksheet:

The intended beneficiaries are State agencies and the vendor community. These amendments should result in more effective procurement processes.

Attached Document:

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## Title 21

# STATE PROCUREMENT REGULATIONS

### Table of Contents

#### 21.11.12 [Reserved] *State Apprenticeship Training Fund*

### Subtitle 01 GENERAL PROVISIONS

#### 21.01.02 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)—(16) (text unchanged)

(16-1) "*Chief Procurement Officer (CPO)*" means an official of the Department of General Services, appointed by the Governor with the advice and consent of the Senate, who is the head of all procurement activity for the Executive Branch of State government within the jurisdiction of the Department of General Services.

(17)—(32) (text unchanged)

(33) "Department" means the State Treasurer, the Departments of General Services[,] and Transportation, [Information Technology, Budget and Management, Public Safety and Correctional Services in connection with procurements for State correctional facilities within the Department's jurisdiction,] and the Maryland Port Commission.

- (34)—(44) (text unchanged)
- (45) ["General Board" means the General Professional Services Selection Board.] Repealed.
- (46)—(91) (text unchanged)
- (92) ["Transportation Board" means the Transportation Professional Services Selection Board.] Repealed.
- (93)—(98) (text unchanged)

### **21.01.03 Applicability**

Authority: Natural Resources Article, §3-103; State Finance and Procurement Article, §§11-201—11-203, 12-101, and 12-104; 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*

#### **.01 Exemptions.**

- A. The following are exempt from applicability of this title:
- (1) – (35-2) (text unchanged)
- (35-3) The State Archives for preservation, conservation, proper care, restoration, and transportation of fine art or decorative art that is in the custody of the Commission on Artistic Property and owned by or loaned to the State; [and]
- (35-4) The Board of Trustees of the Maryland Teachers and State Employees Supplement Retirement Plans, except as provided in State Finance and Procurement Article, Title 12, Subtitle 4 and Title 14, Subtitle 3, Annotated Code of Maryland, for:*
- (a) Services of managers to invest the assets deposited and invested in investment options of the supplemental retirement plans in accordance with the statements of investment policy adopted by the Board of Trustees of the Maryland Teachers and State Employees Supplement Retirement Plans;*
- (b) Expenditures to manage, maintain, and enhance the value of assets deposited and invested in investment options of the supplemental retirement plans selected in accordance with the statements of investment policy adopted by the Board of Trustees of the Maryland Teachers and State Employees Supplement Retirement Plan from time to times; and*
- (c) Expenditures for the safe custody, domestic or global, of assets deposited and invested in investment options of the supplemental retirement plans selected in accordance with subsection (b) of this section; and*
- (36) (text unchanged)
- B. (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, 13-108, and 15-112; Annotated Code of Maryland; Ch. 471, Acts of 1991; Ch. 608, Acts of 1999; Ch. 581, Acts of 2016

#### **.03 Designation of Control and Procurement Authorities.**

- A. Control Authorities. The Board recognizes the following control authorities:
- (1) State Treasurer;

[(2) Department of Budget and Management;]

[(3)] (2) Department of General Services;

[(4)] (3) Department of Transportation; *and*

[(5)] (4) Maryland Port Commission[;

(6) Department of Public Safety and Correctional Services in connection with certain procurements for State correctional facilities within the Department's jurisdiction; and

(7) Department of Information Technology].

B. – C. (text unchanged)

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

A. [The Department of Budget and Management.

(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;

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

(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) The Secretary of Budget and Management has procurement and contracting authority for the following procurement contracts:

(a) Leases for agency supplied employee housing, pursuant to State Finance and Procurement Article, Title 10, Subtitle 3, Annotated Code of Maryland; and

(b) Purchasing, leasing, and rental contracts for the acquisition of motor vehicles for use by State officials and employees, pursuant to State Finance and Procurement Article, Title 3, Subtitle 5, of the Code.] *Repealed.*

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) Capital construction contracts, *construction-related services contracts, information technology contracts, service contracts, architectural and engineering contracts, maintenance contracts, contracts for rental vehicles supplied to using agencies in accordance with COMAR 21.02.05.08, and capital construction change orders* in the amount of \$200,000 or less;

[(2) Capital construction-related service contracts and change orders in the amount of \$200,000 or less;

(3) Architectural and engineering contracts in the amount of \$200,000 or less;

(4) Maintenance contracts in the amount of \$200,000 or less;]

[(5)] (2) For any single item of equipment or single equipment lease, equipment contracts and leases of equipment in the amount of \$200,000 or less, unless funded with general obligation bond proceeds which must be approved by the Board regardless of amount;

[(6)] (3) Contract modifications, excluding construction contract change orders, that:

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

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

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

[(7)] (4) Invoices necessary for the administration of capital improvement contracts;

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

[(9)] (6) Contracts in the amount of [ \$50,000 ] \$100,000 or less resulting from sole source procurement; [and]

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

(8) *Leases for agency supplied employee housing, pursuant to State Finance and Procurement Article, Title 10, Subtitle 3, Annotated Code of Maryland; and*

(9) *Purchasing, leasing, and rental contracts for the acquisition of motor vehicles for use by State officials and employees, pursuant to State Finance and Procurement Article, Title 3, Subtitle 5, of the Code.*

#### 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) – (f) (text unchanged)

(g) Contracts in the amount of [ \$50,000 ] \$100,000 or less resulting from sole source procurement;

(h) – (i) (text unchanged)

(2) (text unchanged)

#### D. Repealed

E. The Treasurer. The Board hereby delegates authority to the Treasurer for the approval and award of the following procurement contracts within the Treasurer's jurisdiction:

(1) Banking, investment, and other financial services contracts authorized by [Article 95 and] the State Finance and Procurement Article, §12-107, Annotated Code of Maryland;

(2) Contracts for insurance and insurance-related services obtained pursuant to State Finance and Procurement Article, Title 9 *and* §12-107, Annotated Code of Maryland.

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) – (8) (text unchanged)

(9) Contracts in the amount of [\$50,000] \$100,000 or less resulting from sole source procurement;

(10) – (11) (text unchanged)

G. Repealed

H. [Department of Public Safety and Correctional Services. The Board delegates authority to the Secretary of Public Safety and Correctional Services for the approval and award of the following procurement contracts for State correctional facilities within the Department's jurisdiction:

(1) Capital construction contracts and change orders in the amount of \$200,000 or less;

(2) Capital construction-related services contracts and change orders in the amount of \$200,000 or less;

(3) Architectural and engineering contracts based upon the selection made by the Department of General Services in accordance with COMAR 21.12.05 in the amount of \$200,000 or less;

(4) For any single item of equipment or single equipment lease within the procurement authority of the Secretary of Public Safety and Correctional Services, equipment contracts and leases of equipment in support of construction and construction-related services in the amount of \$200,000 or less, or unless funded with general obligation bond proceeds, which must be approved by the Board regardless of amount;

(5) Contract modifications relating to contracts for architectural services and engineering services that:

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

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

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

(6) Invoices necessary for the administration of capital improvement contracts;

(7) Contracts for the purchase of commodities and supplies in support of construction and construction-related services;

(8) Contracts in the amount of \$50,000 or less in support of construction and construction-related services resulting from sole source procurement; and

(9) Contracts in the amount of \$50,000 or less in support of construction and construction-related services resulting from competitive procurement in which only one bid or offer was received.] *Repealed.*

I. (text unchanged)

J. [The Department of Information Technology. The Board hereby delegates authority to the Secretary of Information Technology for the approval and award of the following procurement contracts within the Department's jurisdiction:

- (1) Contracts for information technology in the amount of \$200,000 or less;
- (2) Contract modifications that:
  - (a) Do not materially change the scope of the original contract;
  - (b) Individually do not change the amount of the contract, or any cost component of the contract, by more than \$50,000;
  - (c) Exercise by a using agency a contract option of \$200,000 or less; or
  - (d) Are renewals of proprietary information technology software licenses or associated services, provided that the original contract was approved by the Board or designated control agency;
- (3) Contracts in the amount of \$100,000 or less resulting from sole source procurements by using agencies; and
- (4) Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received.] *Repealed.*

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

##### A. Action Agendas.

- (1) (text unchanged)
- (2) The departments shall prepare a separate item for each procurement contract not delegated under this chapter, and shall submit the items to the Board in accordance with the following procedures:
  - (a) [The Department of Budget and Management shall submit the items on a supplement to the Board Secretary's Action Agenda;
  - (b)] The Department of General Services shall submit the items on the Department of General [Service's] *Services* Action Agenda;
  - [(c)] (b) The Department of Transportation and the Maryland Transportation Authority shall submit the items on the Department of Transportation's Action Agenda;
  - [(d)] (c) The University System of Maryland shall submit items requiring Board approval pursuant to COMAR 21.01.03.01-1E on a supplement to the Board Secretary's Action Agenda;
  - [(e)] (d) For those specific projects as may be authorized from time to time by the General Assembly and to the extent so authorized, the Maryland Environmental Service shall submit the items on the Board Secretary's Action Agenda; *and*
  - [(f)] The Department of Public Safety and Correctional Services,] (e) Morgan State University[,] and St. Mary's College of Maryland shall submit the items on the Board Secretary's Action Agenda; and
  - (g) The Department of Information Technology shall submit items on a supplement to the Board Secretary's Action Agenda].

- (3) (text unchanged)

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

- (1) The [departments] *Departments* [and the Department of Public Safety and Correctional Services] shall prepare and submit to the Board Procurement Agency Activity Reports (PAAR) covering all procurement contracts in excess of

\$50,000, except contracts for the purchase of commodities and supplies, made pursuant to this chapter during the previous calendar month or not previously reported.

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

(a) All contract modifications and option renewals greater than \$50,000, but less than the amount requiring Board approval, approved by the departments [and the Department of Public Safety and Correctional Services] pursuant to this chapter;

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

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

(3) The PAAR of the Department of General Services [and the Department of Public Safety and Correctional Services] shall include a summary report of those invoices approved pursuant to this chapter which did not result from competitive bidding.

(4) (text unchanged)

(5) The PAAR shall be delivered by the [departments] *Departments* directly to the Secretary to the Board of Public Works, not later than the second Wednesday of the month following the reporting period, for inclusion as an item on the next Board Secretary's Action Agenda.

C. (text unchanged)

### **21.02.03 Department of Budget and Management - *Repealed***

[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]

#### **.01 Duties, Responsibilities, and Authority.**

The Secretary of Budget and Management shall control the procurement of those items specifically authorized by the State Finance and Procurement Article, §§3-405 and 3-502, Annotated Code of Maryland, various Executive Orders, specific delegations by the Governor and the Board, and COMAR 21.02.01.03.

#### **.02 Review and Approval of Solicitations and Contracts for Services.**

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.

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.

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

(a) Procurement is conducted pursuant to COMAR 21.05.05; and  
(b) Secretary or the Secretary's designee approves a procurement officer's determination which details:

(i) Why no other source can meet the functional or performance requirements of the subject or the contract, and

(ii) Whether efforts were made to locate additional sources, and, if so, the names of the businesses contacted.

(3) The following are exempt from the provisions of this chapter:

(a) Architectural and engineering service contracts of the Department of Transportation;

(b) Contracts for design, acquisition, and construction of capital improvements, leases, and maintenance services procured through or by the Departments of General Services or Transportation;

(c) Supplies, purchased in accordance with regulations of the Department of General Services, the University System of Maryland, Morgan State University, or St. Mary's College of Maryland;

(d) Contracts for higher education student government self-supporting activities, when the funds being used for the payment were collected from non-State sources, provided that all transmittals and invoices are annotated to certify that all funds being used for the payment were collected from non-State sources; and

(e) The sale of forest products.

(4) Unless otherwise specifically provided by statute, other contracts or classes of contracts may be declared in writing exempt in whole or in part from these regulations by the Secretary of Budget and Management.

(5) These regulations apply to all actions of State agencies to procure any services.

(6) Questions arising about the application of these regulations should be referred to the Department of Budget and Management before initiating any contractual obligation.

#### C. Policies and Procedures — Service 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) The agency has filed with the Department a current plan, prepared in accordance with a format and directions promulgated by the Department, that establishes effective internal control procedures, and that has been approved by the Department in writing;

(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;

(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;

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

(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;

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

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

(2) The State agency plan establishing internal control procedures shall be consistent with those sections of these regulations relating to request for proposal procedures, justification, documentation, contract procedures, and internal checks and balances. The agency head is responsible for assuring the agency's compliance with the plan provisions.

(3) Approval of the plan may be withdrawn if the Secretary of Budget and Management determines that the State agency's plan or practice is inconsistent with these regulations. In addition to routine monitoring of agency compliance with these regulations, the Secretary of Budget and Management may conduct on site reviews or sampling of agency documentation in determining whether to approve or withdraw approval of an agency's plan.

(4) The Secretary of Budget and Management may withdraw approval of an agency's plan for contracting without agency concurrence if notified in writing by the Comptroller that the agency's incidences of nonpayment or late payment of contracts are excessive.

(5) Notwithstanding §C(1) of this regulation and any published procedures of the Department permitting aggregation of similar items, any contract of over \$100,000 or any contract modification of a previously approved contract, including all prior modifications, that results in a total contract price of over \$100,000 shall be submitted to the Department. Agencies may not split or subdivide contracts with a single vendor to avoid this requirement.

(6) Solicitations which (based on the anticipated contract cost) may lead to contracts requiring Departmental approval and contracts requiring Departmental approval shall be submitted with the forms prescribed by the Secretary prepared in accordance with the directions of the Department for review and approval as soon as possible to allow reasonable time for review, but not less than 14 days before the implementation of the proposed action.

(7) State agencies shall first consider State resources to meet their requirements as an alternative to contracting. Interagency contracts may be used for the formulation of agreements between State agencies. A contract may be awarded to another State agency even if the agency's bid is not competitive with bids received from outside sources when it is in the best interests of the State to do so.

(8) When contract changes cause the price of the contract to change, the total contract price shall govern the procedure to be followed, unless this requirement is waived in writing by the Department.

D. Reporting Requirements. In addition to the reporting requirements specified in COMAR 21.13 and §C of this regulation, each procurement agency entering into contracts subject to these regulations shall furnish information to the Secretary of Budget and Management on each contract award in such detail and format and with such frequency as the Secretary specifies to fulfill the requirements of COMAR 21.02.01.05B and 21.11.03.

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

#### A. Application.

(1) This regulation applies to all mopeds and motor vehicles as defined by Transportation Article, §§11-134.1, 11-135, and 11-176, Annotated Code of Maryland.

(2) Exempt from this regulation are vehicles assigned persons exempted, in whole or in part, in writing by the Secretary.

#### B. Policies and Procedures.

##### (1) Acquisition of Vehicles.

(a) Standards for purchase shall be determined by the Department of Budget and Management, with the concurrence of the Board. Standards shall be determined for the standard State automobile and such other classes as may be determined by the Secretary.

(b) Funds for vehicle acquisition shall be authorized by the budget or approved budget amendment.

(c) Vehicle purchase requests, with specifications, initially shall be submitted to the Secretary of Budget and Management in the form prescribed by the Secretary.

(d) 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) Gasoline and Oil. State personnel shall observe the following order of priority when obtaining gasoline and oil from:

- (a) State facilities;
- (b) Self-service commercial facilities;
- (c) Full-service commercial facilities.

(3) Accessories, Maintenance, and Repairs. Using agencies shall obtain vehicle accessories, maintenance, and repairs, in accordance with the following priority from:

- (a) An in-house facility;
- (b) The State's vehicle service contractor or contractors; or
- (c) The vendor that offers the most favorable price using applicable small procurement procedures (COMAR 21.05.07).

### **.04 Procurement of Rental Vehicles.**

A. The Secretary of Budget and Management may periodically enter into contracts with automobile rental firms to supply rental vehicles to using agencies.

B. Using agencies requiring the use of rental vehicles shall acquire them in accordance with the terms and conditions of the State contract or as specified by the Secretary, or both.

C. Using agencies requiring the use of rental vehicles not covered by the contracts referenced in §A of this regulation may acquire them using applicable small procurement procedures (COMAR 21.05.07) with the prior approval of the Secretary.

#### **.05 Acquisition of Temporary Personnel Services.**

A. Application. This regulation applies to all State agencies located in areas served under the contracts referenced in §B(1) of this regulation.

B. Policy and Procedure.

(1) The Secretary of Budget and Management may enter into contracts with contractors providing temporary personnel services to supply certain classes of temporary personnel services.

(2) The Secretary shall notify all using agencies of the prices at which temporary personnel services may be obtained and the procedure to be followed to obtain these services under the contracts referenced in §B(1) of this regulation.

(3) A using agency seeking temporary personnel services shall first attempt to meet its needs through the Office of Personnel Services and Benefits.

(4) Using agencies seeking temporary personnel services not available through the Office of Personnel Services and Benefits shall obtain these services in accordance with the Secretary's instructions issued pursuant to §B(2) of this regulation.

(5) Using agencies seeking temporary personnel services not available under §B(4) of this regulation may obtain these services in accordance with Regulation .02 of this chapter.

(6) The Secretary or designee may permit exceptions to these procedures upon written request and justification.]

#### **21.02.05 Department of General Services**

Authority: State Finance and Procurement Article, §§4-204, 12-101, 12-107[(b)(3)], 12-108, 13-103, 13-104, 13-107, and 13-108(a)(1), Annotated Code of Maryland

#### **.01 Duties, Responsibilities, and Authority.**

A. – D. (text unchanged)

E. *The Secretary, through the Office of State Procurement within the Department, shall publish a Maryland State Procurement Manual that contains procurements standards, guidance, procedures and best practices for agencies under the procurement authority of the Department. The Procurement Manual shall be accessible by any person responsible for conducting procurement on behalf of or under the authority of the Department and the general public.*

F. Specific Powers and Duties.

(1) The Secretary has specific powers and duties for the design and construction of public improvements[,]; maintenance[,]; the purchasing of supplies (except insurance) [,]; *services; information technology*; and the leasing of equipment, *vehicles*, and real property.

(2) (text unchanged)

(3) Procurement of Commodities *and Equipment*. Concerning the procurement of commodities, pursuant to State Finance and Procurement Article, §§4-310-4-315, Annotated Code of Maryland, the Secretary is authorized to award purchase contracts for commodities, and equipment for all State agencies, except for [information technology equipment, motor vehicles, the purchase of which requires the prior approval of the Department of Budget and Management, and] purchases on behalf of the Mass Transit Administration of rolling stock and other property peculiar to the operation of a transit system. The Secretary is empowered to determine standards for materials, supplies, and equipment purchases, except for standards for the purchase of motor vehicles. The Secretary is also empowered to establish procedures that the using agencies shall follow when procuring materials, supplies, and equipment through the Department or when procuring those items under the exempt, delegated, or emergency purchasing authorities identified in these regulations.

(4) Leasing.

[(a) Except for motor vehicles and information technology equipment, equipment leasing shall be the responsibility of the Department.]

[(b)] (a) The Secretary is authorized to manage the leasing by the State as lessee of all real property to which the State does not have title. This management function includes:

(i) – (iii) (text unchanged)

[(c)] (b) Exceptions to the Secretary's leasing authority are:

(i) – (ii) (text unchanged)

[(d)] (c) Track and station leases by the Mass Transit Administration are exempt from certain leasing requirements. Handling of these leases shall comply with procedures contained in the Space Management Manual.

[(e)] (d) The following leases are under the Secretary's leasing authority but are not actually administered by the Department. Handling of these leases shall comply with procedures contained in the Department's Space Management Manual:

(i) – (ii) (text unchanged)

[(f)] (e) The Secretary may authorize a using agency to lease space on an emergency basis, if requested.

## **.02 Construction Contracts.**

A. Office of Facilities Planning, Engineering, and Construction. The Department's Office of [Facilities Planning, Engineering, and Construction] *State Procurement* is responsible for [obtaining services] *conducting the procurements* for State construction projects. This Office shall prepare or cause to be prepared contract documents, shall advertise and solicit bids as appropriate, *and* shall manage the contract award process[, and]. *The Department's Office of Facilities Planning, Engineering, and Construction* shall administer the development and completion of the project.

B. Obtaining Services. The using agency may initiate a service request by submitting a program describing the work required to the Office of Facilities Planning, Engineering, and Construction. The program shall be submitted in

accordance with instructions in the Program Manual. Following the receipt of the program, the Department's *Office of Facilities Planning, Engineering, and Construction* shall begin the process to obtain the required public improvements, and shall submit the requisition to the *Office of State Procurement*.

C. Using Agency Responsibilities. Before the contract is let, [the using agency shall provide a written recommendation for acceptance or rejection of the contract award] *the Department of General Services shall provide a written recommendation for acceptance or rejection of the contract award to the Using Agency*. During construction, an official representative of the using agency shall attend the job initiation, progress, punch-out, and any other meeting convened to expedite or review the development of the project.

### **.03 Maintenance Contracts.**

A. (text unchanged)

B. Delegation of Purchasing Authority to Using Agencies. The Department may establish policies and procedures permitting State agencies to enter into maintenance contracts with a value of less than [[\$50,000] \$200,000], without concurrence of the Department. The procedures [shall be similar to the procedures described under COMAR 21.02.03.02C, and shall be included] *are described* in the [Maintenance Contract] *State's Procurement Manual* [described under §C of this regulation].

[C. Maintenance Contract Manual. The Manual identifies procedures which pertain to the using agency's responsibilities in the procurement and development of maintenance projects. Instructions on delegations, bonding requirements, the soliciting of bids, the award of contracts, approval of change orders, and contractor payment are also included in the Manual.]

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

A. Delegation of Purchasing Authority to Using Agencies.

(1) Department of General Services Selects Exemptions. The Department reserves the right to delegate, either by commodity class or dollar value, certain purchase authority to using agencies. These classes and dollar exemptions are identified in the [Department of General Services Using Agency] *State's Procurement Manual*. Delegated purchases are subject to any review, reporting, or auditing requirements established by the Department. Authority delegated by the Department under this regulation may be rescinded at the Department's discretion.

(2) Using Agency May Request Authority Delegation. A using agency may write the Department and present justification for a [commodity] *procurement* which it wishes exempted from the Department's award authority.

(3) (text unchanged)

[(4) Scheduled Purchase Items and Contract Items Supersede any Exempt or Delegated Procurement. The Department operates a regularly scheduled purchase program through which a using agency may plan and order needed commodities. The Department also develops term contracts for various commodities. Except for purchases off a local jurisdiction intergovernmental cooperative purchasing agreement, a using agency may not purchase from an

alternate source an item which is available through the regularly scheduled purchase program or an item which is available through a term requirements or indefinite quantity contract except where an item can be purchased from another vendor when the total cost is less than that of the item on a schedule resulting from an intergovernmental agreement and the price of the purchase does not exceed \$1,000. A written determination shall be made that compares all elements of cost demonstrating the lower cost. Additionally, the total cost per year for all items purchased from an alternate vendor(s) may not exceed \$10,000 for each agency.]

B. Purchases Costing \$10,000 or More.

(1) [In a single transaction for commodities which cost \$10,000 or more in total and which are not ordered through the Department's scheduled purchase program or through a term requirements or indefinite quantity contract, the using agency shall prepare and submit to the Department a requisition form. This unscheduled requisition form shall be completed and distributed in accordance with the instructions in the Using Agency Manual.]

[(2)] The Department may not approve requisitions for commodities *valued \$10,000 or more* which are:

- (a) The subject of a term requirements or indefinite quantity contract; or
- (b) Available from another State agency.

C. (text unchanged)

D. Emergency purchases. The Department shall allow using agencies to make emergency purchases of commodities in accordance with COMAR 21.05.06. Emergency purchases [over \$25,000] shall be reported as required by COMAR 21.05.06.02D. If a using agency determines that an emergency exists, the agency may contact the Department for assistance before making a purchase.

[E. Purchase of Perishables. The Department may delegate its purchase authority for the procurement of perishables to any using agency which the Department determines can properly handle these transactions. A listing of perishables where procurement authority has been delegated is included in the Using Agency Manual.]

[F.] (E.) Receiving and Inspection.

(1) – (2) (text unchanged)

[G.] (F.) Invoice Processing. Each using agency is responsible for promptly processing invoices for payment. The using agency shall match a receiving report and any other supporting documents with appropriate invoices. The using agency shall place all approved invoices on a disbursement transmittal and forward them to the Comptroller's Office for payment.

**.06 Services.**

*A. The Department is responsible for the control of service contracts and provides direction and assistance to the using agencies in their procurement and development of service contracts pursuant to their delegated authority.*

*B. Except as provided in §C, this regulation 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.

C. The following are exempt from this regulation:

(1) Architectural and engineering services contracts of the Departments of General Services and Transportation;

(2) Contracts for acquisition and construction of capital improvements, leases, and maintenance services procured through or by the Departments of General Services and Transportation;

(3) Contracts for higher education student government self-supporting activities, when the funds being used for the payment were collected from non-State sources, provided that all transmittals and invoices are annotated to certify that all funds being used for the payment were collected from non-State sources;

(4) The sale of forest products;

(5) Banking, investment, and other financial services contracts authorized by the State Finance and Procurement Article, §12-107, Annotated Code of Maryland; and

(6) Contracts for insurance and insurance-related services obtained pursuant to State Finance and Procurement Article, Title 9 and §12-107, Annotated Code of Maryland.

D. Unless otherwise specifically provided by statute, other contracts or classes of contracts may be declared in writing exempt in whole or in part from these regulations by the Secretary.

#### **.07 Procurement of State-Owned Motor Vehicles.**

A. Application.

(1) This regulation applies to all mopeds and motor vehicles as defined by Transportation Article, §§11-134.1, 11-135, and 11-176, Annotated Code of Maryland.

(2) Exempt from this regulation are vehicles assigned persons exempted, in whole or in part, in writing by the Secretary.

B. Acquisition of Vehicles.

(1) Standards for purchase shall be determined by the Department of Budget and Management, with the concurrence of the Board. Standards shall be determined for the standard State automobile and such other classes as may be required by the State.

(2) Vehicle purchase requests, with specifications, initially shall be submitted to the Secretary of Budget and Management.

(3) Actual purchase shall be made by the Department.

#### **.08 Procurement of Rental Vehicles.**

A. The Secretary of General Services may periodically enter into contracts with automobile rental firms to supply rental vehicles to using agencies.

B. Using agencies requiring the use of rental vehicles shall acquire them in accordance with the terms and conditions of the State contract or as specified by the Secretary of General Services, or both.

C. Using agencies requiring the use of rental vehicles not covered by the contracts referenced in §A of this regulation may acquire them using applicable

*small procurement procedures (COMAR 21.05.07) with the prior approval of the Secretary of General Services.*

**.09 Acquisition of Temporary Personnel Services.**

*A. The Secretary of General Services may enter into contracts with contractors providing temporary personnel services to supply certain classes of temporary personnel services.*

*B. The Secretary of General Services shall notify all using agencies of the prices at which temporary personnel services may be obtained and the procedure to be followed to obtain these services under the contracts referenced in §A of this regulation.*

*C. The Secretary of General Services or designee may permit exceptions to these procedures upon written request and justification.*

**21.02.08 Procurement [Advisory] Improvement Council – Open Meetings**

Authority: State Finance and Procurement Article, §§12-101 and 12-105; State Government Article, §10-507; Annotated Code of Maryland

**.01 Public Attendance.**

A. At any open session of the Procurement [Advisory] *Improvement Council*, the general public is invited to attend and observe.

B. Except in instances when the Procurement [Advisory] *Improvement Council* expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, a member of the public attending an open session may not participate in the session.

**.02 Disruptive Conduct.**

A. A person attending an open session of the Procurement [Advisory] *Improvement Council* may not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the sessions or that interferes with the right of members of the public to attend and observe the session.

B. – C. (text unchanged)

**.03 Recording, Photographing, and Broadcasting of Open Sessions.**

A. A member of the public, including any representative of the news media, may record discussions of the Procurement [Advisory] *Improvement Council* at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise that disturbs members of the Procurement [Advisory] *Improvement Council* or other persons attending the session.

B. A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Procurement [Advisory] *Improvement Council* at an open session by means of any type of camera if the camera:

(1) Is operated without excessively bright artificial light that disturbs members of the Procurement [Advisory] *Improvement Council* or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the Procurement [Advisory] *Improvement* Council or other persons attending the session.

C. A representative of the news media may broadcast or televise the proceedings of the Procurement [Advisory] *Improvement* Council at an open session if the equipment used:

(1) Is operated without excessively bright artificial light that disturbs members of the Procurement [Advisory] *Improvement* Council or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the Procurement [Advisory] *Improvement* Council or other persons attending the session.

D. (text unchanged)

#### **.04 Recordings Not Part of Record.**

A recording of an open session made by a member of the public, or any transcript derived from such a recording, may not be considered a part of the record of any proceeding of the Procurement [Advisory] *Improvement* Council.

## **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*

#### **.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. – G. (text unchanged)

H. Architectural, [and] engineering, *and land surveying* services qualification based selection; or

I. (text unchanged)

#### **.07 Procurement Record.**

The procurement file on each procurement under COMAR 21.05.02 and 21.05.03 or 21.12.02—21.12.05 *may be kept electronically and* shall include:

A. – F. (text unchanged)

### **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

#### **.06 Master List.**

[A.] Vendor lists may be compiled by the procurement agency to provide State agencies with the names of businesses that may be interested in competing for various types of State procurement contracts. *A Master Vendor list shall be compiled by the Department of General Services as part of the eMaryland*

*Marketplace*. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise is capable of successfully performing a State contract. Any person desiring to do business with the State shall [submit a bidder's application to the appropriate procurement agency] *register with eMaryland Marketplace using the appropriate services and commodities codes* indicating the types or kinds of State procurements for which the vendor wishes to be considered. Out-of-State vendors shall be registered with the Maryland Department of Assessments and Taxation before award of the contract.

[B. Deletion of Vendors. Businesses that fail to respond to solicitations or notices of availability on three consecutive invitations of similar items may be removed by the procurement officer from the applicable vendors list after notice to the vendor. Prospective bidders who were sent solicitations or have obtained bidding documents who have been deleted but who currently meet the criteria for inclusion on the list may be reinstated on the list at their request.]

**.11 Receipt, Opening, and [Recording] Posting of Bids.**

A. Receipt. Upon [its] receipt of a paper bid or bid modification, each bid and modification shall be stored in a secure place until the time and date set for bid opening. *For online bid submission through the eMaryland Marketplace, the system security configuration shall not allow bids to be opened prior to the time and date established in the solicitation.* Before bid opening the State may not disclose the identity of any bidder.

B. Opening and [Recording] Posting. Bids and modifications shall be opened publicly, at the time, date, and place designated in the invitation for bids. The name of each bidder, the bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. [This information also shall be recorded at the time of bid opening.] The bids shall be tabulated or a bid abstract made. The opened bid shall be available for public inspection at a reasonable time after bid opening but in any case before contract award except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in this title. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available at a reasonable time after bid opening but in any event before contract award regardless of any designation to the contrary at the time of bid opening.

C. (text unchanged)

*D. Electronic receipt, bid opening and posting of the required information shall satisfy the requirements of this section.*

**.17 Multi-Step Sealed Bidding.**

A. (text unchanged)

B. Conditions for Use. Multi-step sealed bidding may be used when it is determined by the procurement officer[, with the approval of the agency head or

designee and the appropriate control authority,] that it is impracticable to initially prepare specifications to support an award based solely on bid price.

C. (text unchanged)

### **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

#### **.02 Solicitation of Proposals.**

A. – F. (text unchanged)

G. Receipt of Proposals.

(1) Proposals and modifications shall *either* be held in a secure place *if paper submission, or remain locked via the eMaryland Marketplace per approved security configurations* until the established due date. Proposals [may] *shall* not be opened publicly but, *in the event a paper submission is received*, shall be opened in the presence of at least two State employees. [After the established due date, a register of proposals shall be prepared that identifies each offeror.]

(2) (text unchanged)

### **21.05.09 Intergovernmental Cooperative Purchasing**

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

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

A. (text unchanged)

B. Terms Defined.

(1) – (3) (text unchanged)

(4) "Primary procurement unit" means:

(a) The State Treasurer;

(b) [The Department of Budget and Management;

(c)] (b) The Department of General Services;

[(d)] (c) The Department of Transportation;

[(e)] (d) The Maryland Port Commission;

[(f) The Department of Public Safety and Correctional Services;

(g)] (e) Morgan State University;

[(h)] (f) St. Mary's College of Maryland; *and*

[(i)] (g) The University System of Maryland[; and

(j) The Department of Information Technology].

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

When a primary procurement unit is a named participant in a solicitation for bids or proposals for an intergovernmental cooperative purchasing agreement, or the unit acts as a sponsor of an agreement, and the value of the procurement to be made by the State is expected to exceed [\$25,000] \$50,000, public notice of the solicitation shall be given pursuant to COMAR 21.05.02.04.

### **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[, and 13-202], Annotated Code of Maryland

## **.07 Approvals.**

A. (text unchanged)

B. Pursuant to COMAR [21.02.01.04A] *21.02.01.04B*, the Department of [Budget and Management] *General Services* 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].

## **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, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 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*

#### **.11 Termination for Default.**

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Clause — Termination for Default (short form).

"If the Contractor fails to fulfill its obligation under this contract properly and on time, *fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect*, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B."

B. Alternate Clause — Termination for Default (long form).

"(1) The State may, subject to the provisions of paragraph (3) of this regulation, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof; [or] (b) *If the Contractor fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect*; or (c) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the

procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

"(2) – (7)" (text unchanged)

**.29 Election Service Providers – Ownership, Investment In, or Control by a Foreign National.**

*Mandatory provision for all State Board of Elections contracts, including secondary competition awards, with an election service provider, as defined in Election Law Article, Title 2, Subtitle 1, Annotated Code of Maryland. The following clause is preferred:*

*“The Contractor agrees to provide notice of: (a) any ownership of or investment in the election service provider or control of the election service provider by a foreign national at the time of the award of the contract; and (b) any material change in any ownership of or investment in the election service provider or control of the election service provider by a foreign national at any time for the duration of the contract. All notices required by this provision shall include: (a) the name and nationality of the foreign national that has ownership of or investment in or control of the election service provider; and (b) the nature and extent of the ownership, investment, or control.*

*On a determination by the Administrator of the State Board of Elections that the foreign national has the ability to control, influence, or direct the election service provider in any manner that would compromise or influence, or give the appearance of compromising or influencing the independence and integrity of an election, the Administrator of the State Board of Elections may terminate, in whole or in part, the contract with the election service provider.*

*Within 7 days after the Administrator of the State Board of Elections exercises the authority to terminate, in whole or in part, a contract with an election service provider under subsection B. of this Regulation, the Administrator of the State Board of Elections shall notify the appropriate persons in writing of the termination of the contract and the Administrator’s reasons for terminating the contract.”*

**.30 Election Service Providers – Actual or Attempted Security Violations**

*Mandatory provision for all State Board of Elections contracts, including secondary competition awards, with an election service provider, as defined in Election Law Article, Title 2, Subtitle 1, Annotated Code of Maryland. The following clause is preferred:*

*“The Contractor, upon receipt of knowledge that a security violation or significant attempted security violation, as defined in Election Law Article, Title 2, Subtitle 1, Annotated Code of Maryland, has occurred involving an election system provided, supported, or maintained by the election service provider, shall: (a) notify the Administrator of the State Board of Elections in writing as soon as practicable, but not later than four days after becoming aware of the security violation or significant attempted security violation; and (b) cooperate with the Administrator of the State Board of Elections in submitting a report on each*

*security violation and significant attempted security violation involving an election system.”*

## **21.07.02 Mandatory Construction Contract Clauses**

Authority: State Finance and Procurement Article, §§12-101, 13-216, 13-218, [and] 13-225, and 17-801-17-804, Annotated Code of Maryland

### **.07 Default, Delay and Time Extensions.**

Mandatory provision for all construction contracts:

"Termination for Default — Damages for Delay — Time Extensions

"(1) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract, or any extension thereof, [or] fails to complete said work within this time, *or fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect*, the State may, by written notice to the Contractor, terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay. In this event the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's refusal or failure to complete the work within the specified time.

"(2) – (7)" (text unchanged)

## **21.07.03 Mandatory Terms and Conditions for Purchase Orders Over \$50,000**

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

### **.01 General.**

The following are mandatory terms and conditions to be included in all purchase orders exceeding [\$25,000] *\$50,000*.

## **Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES**

### **21.10.02 Protests**

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

#### **.02 Filing of Protest.**

A. – B. (text unchanged)

C. A protest may be filed *in writing* by *hand delivery*, electronic means [only if expressly permitted], *via the U.S. Postal Service*, or *via a courier service* [and in the manner specified by the solicitation].

#### **.04 Form.**

To expedite handling of protests, the *front of the envelope, or in the event of an electronic submission, the subject line* should be labeled "Protest". The written protest shall include as a minimum the following:

A. – D. (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. 119, Acts of 2016

#### **.02 Small Business Procurement Programs.**

A. (text unchanged)

B. The small business preference program specifically authorizes the Department of General Services, Department of Transportation, University System of Maryland, *and* Morgan State University[, and, for procurements in connection with the construction of State correctional facilities, Department of Public Safety and Correctional Services] to apply certain percentage price preferences in favor of certified small businesses when evaluating and awarding bids on those procurements designated for a small business preference.

C. (text unchanged)

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

A. (text unchanged)

B. *The Governor's Office of Small, Minority, and Women Business Affairs shall certify a business as a small business for the exclusive purpose of pursuing out-of-State contracts if the business has:*

(1) *250 or fewer employees; or*

(2) *Average annual gross receipts of \$10,000,000 or less averaged over its most recently completed three fiscal years.*

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

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

[D.] E. Affidavit Form. The Small Business Affidavit shall be in the following form:

#### **SMALL BUSINESS AFFIDAVIT**

I, \_\_\_\_\_ (type or print your name legibly), affirm to the State of Maryland that:

1. I am the \_\_\_\_\_ (type or print legibly your title, office, or capacity) of \_\_\_\_\_ (type or print legibly the correct and complete company name) hereinafter referred to as the "Business."

2. The Business is:

(a) a for-profit enterprise;

- (b) not a broker, as defined in COMAR 21.01.02.01B(13-1);
- (c) independently owned and operated;
- (d) not a subsidiary of another business;
- (e) not dominant in its field of operation;
- (f) With respect to employees, either:
  - (i) The wholesale operations of the Business did not employ more than 50 persons in its most recently completed 3 fiscal years;
  - (ii) The retail operations of the Business did not employ more than 25 persons in its most recently completed 3 fiscal years;
  - (iii) The manufacturing operations of the Business did not employ more than 100 persons in its most recently completed 3 fiscal years;
  - (iv) The service operations of the Business did not employ more than 100 persons in its most recently completed 3 fiscal years;
  - (v) The construction operations of the Business did not employ more than 50 persons in its most recently completed 3 fiscal years; or
  - (vi) The architect and engineering services of the Business did not employ more than 100 persons in its most recently completed 3 fiscal years; and
- (g) With respect to gross sales:
  - (i) The gross sales of its wholesale operations did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal years;
  - (ii) The gross sales of its retail operations did not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;
  - (iii) The gross sales of its manufacturing operations did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;
  - (iv) The gross sales of its service operations did not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;
  - (v) 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
  - (vi) 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 shall be the average(s) for each year or part of year during which the business has been in existence.

*3. For the exclusive purpose of pursuing out-of-State contracts, the business has:*

- (1) 250 or fewer employees; or*
- (2) Average annual gross receipts of \$10,000,000 or less averaged over its most recently completed three fiscal years.*

[9.] 4. For small businesses claiming an additional percentage preference for being veteran-owned (2%) or disabled-veteran-owned (3%), initial next to the applicable statement:

The business is at least 51% owned and controlled by one or more individuals who are veterans as defined in 38 U.S.C. §101(2) and who are domiciled in Maryland.

Or

The business is at least 51% owned and controlled by one or more individuals who are disabled veterans domiciled in Maryland and who have been certified by the U.S. Department of Veterans Affairs as having a service-connected disability regardless of the disability rating.

[10.] 5. I am fully authorized by the Business to provide this Affidavit.

[11.] 6. Upon request of the State of Maryland, the Business promises to provide the State promptly with copies of the complete federal and state (all states in which the Business filed returns) income tax returns for the most recently completed 3 fiscal years of the Business.

[12.] 7. I understand that the State of Maryland may rely upon this affidavit and that if the information provided by me in this certification is false I may be subject to criminal prosecution for perjury, procurement fraud, and other crimes and any contract awarded to the Business in reliance upon this Affidavit may be void or subject to termination for default.

UNDER PENALTIES OF PERJURY, I hereby swear that the matters stated in this Affidavit are true.

\_\_\_\_\_(Date)  
\_\_\_\_\_  
Signature

Type or print name legibly \_\_\_\_\_

[E.] F. Penalties for Submitting False Information. If information provided by the business in the affidavit or by other means is materially false, the bidder or offeror and the individual providing the false information may be subject to criminal prosecution for perjury, procurement fraud, and other crimes and may be subject to debarment, and all contract awards to the business in reliance upon the inaccurate affidavit or other information may be void or subject to termination for default.

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

A. Applicability. The small business preference program applies to procurements by the Department of Transportation, the Department of General Services, the University System of Maryland, and Morgan State University. [The small business preference program also applies to the Department of Public Safety and Correctional Services for procurements in connection with the construction of a State correctional facility.]

##### **B. Procedures.**

(1) Designation of Small Business Preference Contracts. The Secretaries of General Services[,] and Transportation, [and Public Safety and Correctional Services,] the Chancellor of the University System of Maryland, and the President of Morgan State University or their designees shall screen all procurements potentially eligible for a small business preference and shall determine which of those procurements shall be made under these procedures and the percentage preference to be applied. The determination shall be based on the availability of qualified, certified small businesses and other appropriate factors.

(2) – (5) (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. 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; Ch. 415, Acts of 2015; Ch. 313, Acts of 2016; Chs. 340 and 438, Acts of 2017; Chs. 335, 336, 481, and 482, Acts of 2018; Ch. 316, Acts of 2019

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

A. – B. (text unchanged)

C. [The Department of Information Technology, in executing its responsibility under State Finance and Procurement Article, Title 3A, Subtitle 4, Annotated Code of Maryland, over procurement of information technology equipment and related services, shall require procurement agencies to make those procurements in compliance with this chapter.

D.] When delegating procurement authority to procurement agencies, the Department of General Services [and the Department of Budget and Management] shall condition the delegation on compliance with this chapter.

[E.] 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 for the certification and reporting procedures required by this chapter.

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

A. (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(j)(1)(i)1, 2, 3, 4, and 6] §14-301(k)(1)(i)1, 2, 3, 4, and 6, Annotated Code of Maryland.

(4) – (5) (text unchanged)

C. – G. (text unchanged)

#### **.15 Certification — General.**

A. – C. (text unchanged)

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 as a State-certified MBE if the business:*

*(1) Has obtained certification under the Federal Disadvantaged Business Enterprise Program; and*

*(2) Meets the eligibility requirements of the State Minority Business Enterprise Program.*

### **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

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

##### **A. 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 [when] *if the specified products are made, manufactured, remanufactured, or assembled by Blind Industries and Services of Maryland and are available.*

B. – F. (text unchanged)

### **21.11.13 Veteran-Owned Small Business Enterprises**

Authority: State Finance and Procurement Article, §§14-601—14-605; Chs. 343 and 344, Acts of 2015; Chs. 708 and 709, Acts of 2017

#### **.01 General — Purpose.**

This chapter provides that maximum contracting opportunities be extended to veteran-owned small business enterprises, as both prime contractors and subcontractors, and establishes that:

A. (text unchanged)

B. The requirements of this chapter may be applied to individual task orders competitively procured among contractors under a [multiple-award procurement] *master contract* as provided in COMAR [21.06.03.10] *21.05.13.05.*

## **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, [14-208,] 14-305, 14-505, 15-110, 15-111, and 17-104; Annotated Code of Maryland; Ch. 6, Acts of 2019

#### **.01 Sole Source, Emergency, and Expedited Procurement Reports.**

A. Requirements. The procedures for approval and reporting the award of a contract under sole source, emergency, or expedited situations are provided under COMAR 21.05.05 when there is only one source and COMAR 21.05.06 for all emergency and expedited procurements except for certain architectural services and engineering services which are governed by COMAR 21.12.02.[14 and 21.12.04.08].

B. (text unchanged)

C. [Report of the Board—Expedited Procurements. Subject to State Government Article, §2-1246, Annotated Code of Maryland, the Governor shall prepare and submit an annual written report within 90 days following the close of

the fiscal year to the General Assembly of each expedited procurement approved by the Board during the preceding fiscal year.] *Repealed.*

**.03 Reports of the Small Business Reserve [Programs] Program.**

A. [Small Business Preference Program. The Secretary of General Services, the Secretary of Transportation, the Chancellor of the University System of Maryland, and Morgan State University shall prepare and submit a written report annually within 90 days following the close of the fiscal year to the Board, and subject to State Government Article, §2-1246, Annotated Code of Maryland, to the Legislative Policy Committee, about the operation and effectiveness of the small business preference program (State Finance and Procurement Article, §14-208, Annotated Code of Maryland).] *Repealed.*

B. (text unchanged)

**.07 Reporting of Protests and Contract Disputes.**

Each procurement officer shall prepare and submit a written report to [his] *the procurement officer's* respective agency head concerning all protests and contract disputes. The frequency of this report shall be determined by the procurement agency. The report shall, at a minimum:

A. – C. (text unchanged)

**.09 Report of Noncompetitive Negotiated Procurements.**

The Department of [Budget and Management] *General Services* shall prepare and submit an annual report within 90 days following the close of the fiscal year to the Board and, subject to State Government Article, §2-1246, Annotated Code of Maryland, to the General Assembly, of each class of procurement for which the noncompetitive negotiated procurement method has been approved. The report shall describe the reason for approving the use of that methodology for each class.