

MARYLAND REGISTER

Proposed Action on Regulations	
<b>Date Filed with AELR Committee</b> April 19, 2023	<b>Date Filed with Division of State Documents</b>  <b>Document Number</b> 23-070-P  <b>Date of Publication in MD Register</b>

**1. Desired date of publication in Maryland Register: June 02, 2023**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
21	01	02	01
21	01	03	01
21	01	03	03
21	01	03	01-1
21	02	01	04
21	05	01	01
21	05	03	02
21	05	06	01
21	05	07	06
21	05	08	05
21	05	09	08
21	05	13	03
21	05	13	05
21	05	14	01
21	05	14	02
21	05	14	06
21	05	15	01
21	05	15	04
21	05	15	05

21	06	09	01
21	07	01	31
21	07	03	27
21	08	03	03
21	10	08	01
21	10	08	02
21	10	08	06
21	11	01	06
21	11	03	03
21	11	03	09
21	11	03	17
21	11	05	01
21	11	05	03
21	11	05	04
21	11	05	07
21	11	14	04
21	13	01	08
21	13	01	14

### **3. Promulgating Authority**

Board of Public Works

### **4. Name of Regulations Coordinator**

Gabriel Gnall

#### **Telephone Number**

410.260.7335

#### **Mailing Address**

80 Calvert Street - Rm 117  
Annapolis, MD 21401

#### **Email**

[gabriel.gnall@maryland.gov](mailto:gabriel.gnall@maryland.gov)

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

Lisa Johnson

**Telephone Number**

410.260.7335

**Mailing Address**

80 Calvert Street - Rm 117  
Annapolis, MD 21401

**Email**

lisa.johnson1@maryland.gov

**6. Check applicable items:**

- New Regulations
- Amendments to Existing Regulations
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval

**7. Is there Emergency text that is identical to this Proposal:**

Yes  No

**8. Incorporation by Reference**

Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 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 David Bohannon, General Counsel, telephone #410.260.7335, on March 15, 2023. 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**

March 15, 2023

## **Title 21**

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

## **Subtitle 13 PROCUREMENT REPORTING REQUIREMENTS**

### **21.13.01 Reporting Requirements**

Authority: Authority: State Finance and Procurement Article, §§3.5-301, 11-101, 12-101, 13-101, and 13-108, Annotated Code of Maryland; Authority: Natural Resources Article, §3-103; State Finance and Procurement Article, §§11-201—11-203, 12-101, [and] 12-104, and 17-502; 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; Authority: Education Article, §§14-204, 14-205, and 14-405;

State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, 12-301, 12-302, 13-108, and 15-112; Authority: State Finance and Procurement Article, §§12-101, 13-226, and 15-210; Commercial Law Article, §§21-101—21-120; Annotated Code of Maryland; 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; 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; Authority: State Finance and Procurement Article, §§12-101, 13-104, and 13-105, Annotated Code of Maryland; Authority: Public Safety Article, §14-117; State Finance and Procurement Article, §§12-101 and 13-108; Annotated Code of Maryland; Authority: State Finance and Procurement Article, §§12-101, 13-109, 14-301—14-308, [and] 14-406, and 15-226, Annotated Code of Maryland; Authority: Election Law Article, §§14-101—14-108; State Finance and Procurement Article, §§3-412, 3.5-311, 11-206, 12-101, 13-207, 13-218, 13-221, 14-303, 14-308, 14-406, 16-102, 16-202, 16-203, 17-401—17-402, and Title 19; Annotated Code of Maryland; Ch. 293, Acts of 2009; Authority: State Finance and Procurement Article, §§12-101, 13-102, [and] 13-110, and 14-303, Annotated Code of Maryland; Ch. 774, Acts of 2017; Authority: State Finance and Procurement Article, §§12-101, 13-101, 13-102, 13-113, [and] 13-114, and 14-303, Annotated Code of Maryland; Authority: State Finance and Procurement Article, §§13-102 [and] 13-111, and 14-303, Annotated Code of Maryland; Authority: State Finance and Procurement Article, §§15-101—15-105, Annotated Code of Maryland; 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, 15-226, 16-202, 17-401, 17-402, and 19-114; Annotated Code of Maryland; Chs. 588, 589, and 630, Acts of 2017; Ch. 403, Acts of 2019; Authority: State Finance and Procurement Article, §§12-101, 13-216, 13-218, 13-225, 15-226, and 17-801—17-804, Annotated Code of Maryland; 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, 15-226, 16-202, 17-401, 17-402; Annotated Code of Maryland; Ch. 630, Acts of 2017; Authority: State Finance and Procurement Article, §§11-205.1, 12-101, and 16-101—16-312; State Government Article, §§10-201—10-217; Annotated Code of Maryland; Authority: State Finance and Procurement Article, §15-226, Annotated Code of Maryland; Authority: State Finance and Procurement Article, §§12-101, 14-201—14-208, and 14-501—14-505, Annotated Code of Maryland; Authority: State Finance and Procurement Article, §§12-101 and 14-301—14-308, Annotated Code of Maryland; Chs. 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; Ch. 322, Acts of 2021; 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; Authority: State Finance and Procurement Article, §§14-601—14-605; Chs. 343 and 344, Acts of 2015; Chs. 708 and 709, Acts of 2017; Ch. 740, Acts of 2018; Ch. 79, Acts of 2021; Authority: Election Law

### **Notice of Proposed Action**

[23-070-P]

The Board of Public Works proposes to:

(1) Amend regulation .01 under COMAR 21.01.02, regulation .04 under COMAR 21.02.01, regulation .01 under COMAR 21.03.05, regulation .01 under COMAR 21.05.01, regulation .01 under COMAR 21.05.02, regulation .02 under COMAR 21.05.03, regulation .06 under COMAR 21.05.07, regulation .08 under COMAR 21.05.09, regulations .01, .03, and .05 under COMAR 21.05.13, regulation .01 under COMAR 21.06.09, regulation .31 under COMAR 21.07.01, regulation .05-2 under COMAR 21.07.02, regulation .27 under COMAR 21.07.03, regulation .03 under COMAR 21.08.03, regulations .01, .02, and .06 under COMAR 21.10.08, regulations .02 and .06 under COMAR 21.11.01, regulations .03, .09 and .17 under COMAR 21.11.03, regulations .01-.07 under COMAR 21.11.05, regulation .04 under COMAR 21.11.14, regulation .18 under COMAR 21.13.01, regulations .01, .01-1, and .03 under COMAR 21.01.03, regulation .01 under COMAR 21.05.06, regulation .05 under COMAR 21.05.08, regulations .08 and .14 under COMAR 21.13.01; and (2) Adopt new regulations .01-.06 under COMAR 21.05.14, and new regulations .01-.05 under COMAR 21.05.15. This action was considered at the Board of Public Works meeting held on March 15, 2023.

#### **Statement of Purpose**

The purpose of this action is to revise regulations in COMAR Title 21 to implement recently-enacted legislation and update procurement requirements in accordance with prior legislative changes.

#### **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 Gnull, Procurement Advisor, Board of Public Works, 80 Calvert Street - Room 117 Annapolis, MD 21401, or call 410-260-7335, or email to [gabriel.gnull@maryland.gov](mailto:gabriel.gnull@maryland.gov). Comments will be accepted through July 03, 2023. A public hearing has not been scheduled.

JOHN GONTRUM  
Executive Secretary

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

A. Fiscal Year in which regulations will become effective: **FY 23**

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:

**undefined**

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.

**n/a**

G. Small Business Worksheet:

**n/a**

# Title 21

## STATE PROCUREMENT REGULATIONS

### Subtitle 01 GENERAL PROVISIONS

#### 21.01.02 Terminology

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

##### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (35) (text unchanged)

(35-1) “*eMaryland Marketplace*” or “*eMaryland Marketplace Advantage*” or “*eMMA*” means the Internet-based procurement system managed by the Department of General Services.

(36) – (47) (text unchanged)

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

(a) Maintenance;

(b) Telecommunications; [and]

(c) *Hardware*;

(d) *Software*; and

(e) Associated [consulting] services.

(48) – (64) (text unchanged)

(64-1) “*Primary procurement unit*” means:

(a) *The State Treasurer*;

(b) *The Department of General Services*;

(c) *The Department of Transportation*;

(d) *The Maryland Port Commission*;

(e) *Morgan State University*;

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

(g) *The University System of Maryland*.

(65) – (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, and 17-502; 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. (text unchanged)

B. The provisions of State Finance and Procurement Article, §§10-204, 11-205, 13-219, 13-221, §15-112, Title 12, Subtitle 2 and 4, Title 16 and Title 17, Annotated Code of Maryland, apply to procurements referred to in §A(4), (9), (11)—(16), (18)—(20), (22)—(23), and (26)—(31) of this regulation. The provisions of State Finance and Procurement Article, Title 14, Subtitle 3, Annotated Code of Maryland, apply to all procurements referred to in §A of this regulation except §A(1)—(3), (4)(a) and (d), (5)—(8), (10), and (13) of this regulation.

C. – D. (text unchanged)

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

A. Except as provided in this regulation, the University System of Maryland, Morgan State University, *Baltimore City Community College*, and St. Mary's College of Maryland are exempt from applicability of this title and Division II of the State Finance and Procurement Article, Annotated Code of Maryland.

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

(1) The following provisions of State Finance and Procurement Article, Annotated Code of Maryland, apply to the University System of Maryland, Morgan State University, *Baltimore City Community College*, and St. Mary's College of Maryland:

(a) §11-205 (Collusion);

(b) §11-205.1 (Falsification, Concealment, etc., of Material Facts);

(c) §13-219 (Nondiscrimination Clause);

(d) §13-225 (Retainage);

(e) §15-226 (Prompt Payment of Subcontractors);

(f) Title 14, Subtitle 3 (Minority Business Enterprise Participation) and Subtitle 7 (*Certified Local Farm Enterprise Program*);

(g) Title 15, Subtitle 1 (Procurement Contract Administration);

(h) Title 16 (Suspension and Debarment of Contractors); [and]



(i) *Title 17, Subtitle 5 (eMaryland Marketplace – Use by Certain Persons)*

(j) §14-110(b) and (c) (Preferred Provider Reporting).

(2) [State Finance and Procurement Article, Title 14, Subtitle 5 (Small Business Reserve Program) applies to the University System of Maryland and Morgan State University.

(3)] State Finance and Procurement Article, Title 14, Subtitle 2 (Small Business Preference Program) applies to *the University System of Maryland and Morgan State University*.

C. The University System of Maryland, Morgan State University, *Baltimore City Community College*, and St. Mary's College of Maryland shall conduct procurements under procedures that promote the purposes stated in State Finance and Procurement Article, §11-201, Annotated Code of Maryland.

D. The requirements of §§B and C of this regulation do not apply to:

(1) Procurement by the University System of Maryland, Morgan State University, *Baltimore City Community College*, or St. Mary's College of Maryland from:

(a) – (f) (text unchanged)

(2) Procurement by the University System of Maryland, Morgan State University, *Baltimore City Community College*, or St. Mary's College of Maryland in support of enterprise activities for the purpose of:

(a) – (c) (text unchanged)

(3) (text unchanged)

E. Before entering into a contract for services that [exceed] *exceeds* \$1,000,000 (*\$500,000 for Baltimore City Community College*) or a contract for capital improvements with a value that exceeds \$1,000,000 (*\$500,000 for Baltimore City Community College*), the University System of Maryland, Morgan State University, *Baltimore City Community College*, and St. Mary's College of Maryland shall obtain the review and approval of the Board of Public Works by submitting an Action Agenda item pursuant to COMAR 21.02.01.05A(2)(d).

### **.03 Organizational Applicability.**

A. (text unchanged)

B. Specifically subject to these regulations are:

(1) Procurements by a State agency, even if a resulting procurement contract will involve no expenditure by the State and will produce revenue for the State for services that are to be provided for the benefit of:

(a) – (c) (text unchanged)

(d) The public at a State transportation facility, unless a revenue-producing contract involves:

(i) A license, permit, or similar permission to use State facilities for activities related to the movement of passengers or goods, or for providing goods or services to passengers, patrons, or tenants at a transportation facility, or for advertising or promotional purposes, *or*

(ii) A lease of State property under State Finance and Procurement Article, Title 10, Subtitle 3, Annotated Code of Maryland; *or*

(e) (text unchanged)

(2) – (3) (text unchanged)

## **Subtitle 02 STATE PROCUREMENT ORGANIZATION**

### **21.02.01 Board of Public Works**

Authority: Education Article, §§14-204, 14-205, and 14-405;

State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, *12-301, 12-302*, 13-108, and 15-112;

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

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

(2) – (9) (text unchanged)

(10) *The Department of General Services has procurement and contracting authority for procurements by the Department for the purpose of modernizing cybersecurity infrastructure for the state valued below \$1,000,000.*

(11) *Energy Performance Contracts.*

(a) *A procurement agency shall consult with the Department of General Services during the development phase of a project that will require an energy performance contract.*

(b) Before issuing a request for proposals for an energy performance contract, a procurement agency shall consult with the Department of General Services and the Chief Procurement Officer.

(c) The Department of General Services shall review the proposed request to ensure that it meets with the State energy standards and preserves the State's flexibility to investigate and use economically justifiable new technologies.

(d) A procuring agency pursuing an energy contract must receive final approval from the Department of General Services before submitting the proposed contract to the Board of Public Works for approval.

(e) Notwithstanding any other provision of law and subject to the approval and control of the Board of Public Works and the Chief Procurement Officer, a unit of State government is authorized to enter into energy performance contracts of up to 30 years' duration.

C. – I. (text unchanged)

## **Subtitle 03 STATE PROCUREMENT REGULATIONS AND CONTRACTS**

### **21.03.05 Electronic Transactions**

Authority: State Finance and Procurement Article, §§12-101, 13-226, and 15-210; Commercial Law Article, §§21-101—21-120; Annotated Code of Maryland

#### **.01 Electronic Procurements Authorized.**

A. (text unchanged)

B. Procurement transactions conducted by electronic means may include:

(1) Solicitations;

(2) Bids or proposals;

(3) Evaluations;

(4) Awards;

[(4)] (5) Execution;

[(5)] (6) Contract Administration;

[(6)] (7) Protests; and

[(7)] (8) Claims.

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

### **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. Competitive sealed bidding *under COMAR 21.05.02*;

B. Competitive sealed proposals *under COMAR 21.05.03*;

C. Negotiated award after unsatisfactory competitive sealed bidding *under COMAR 21.05.04*;

D. Noncompetitive negotiations:

(1) Sole source *under COMAR 21.05.05*;

(2) Emergency and expedited *under COMAR 21.05.06*;

E. Small procurement procedures *under COMAR 21.05.07*;

F. Noncompetitive negotiated procurement *under COMAR 21.05.12.04*;

G. Intergovernmental cooperative purchasing *under COMAR 21.05.09*;

H. Architectural, engineering, and land surveying services qualification based selection *under COMAR 21.12*; [or]

I. Master contracting *under COMAR 21.05.13*[.];

J. Auction bids *under COMAR 21.05.14*; or

K. Pay-for-success contracting *under COMAR 21.05.15*.

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

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

#### **.01 Invitation for Bids.**

A. (text unchanged)

B. Content. The invitation for bids shall include the following:

(1) – (2) (text unchanged)

(3) Whether award shall be made on the basis of the most favorable bid price or the most favorable evaluated bid price, whichever is applicable. If the latter basis is used, the objectively measurable criteria to be used shall be set forth in the invitation for bids; [and]

(4) The mandatory solicitation requirements set forth in COMAR 21.05.08[.]; and

(5) *A summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.*  
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. Content of the Request for Proposals. The request for proposals shall include:

(1) – (10) (text unchanged)

(11) *A summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.*

B. – G. (text unchanged)

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

Authority: Public Safety Article, §14-117; State Finance and Procurement Article, §§12-101 and 13-108; Annotated Code of Maryland

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

A. (text unchanged)

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

### **21.05.07 Small Procurement Regulations (\$50,000 or Less)**

Authority: State Finance and Procurement Article, §§12-101, 13-109, 14-301—14-308, [and] 14-406, and 15-226, Annotated Code of Maryland

#### **.06 Standards.**

A. Solicitation Objective.

(1) Competition.

(a) The objective of soliciting bids or offers is to foster competition in obtaining needed items in a cost effective manner. In all small procurements, competition should be sought to the extent practical considering factors such as availability of vendors, dollar value of the procurement, cost of administering the procurement, and time available to make the procurement including delivery time. For Categories II and III responsive bids or acceptable offers from at least two vendors should be obtained.

(b) *A solicitation shall include a summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.*

(2) – (4) (text unchanged)

B. – F. (text unchanged)

G. Contract Clauses. In addition to the contract elements specified in §F of this regulation, a written small procurement contract may include the clauses, items, or conditions specified below as well as those additional clauses necessary for the particular procurement. The language of the following clauses is preferred:

(1) – (8) (text unchanged)

(9) *Prompt Payment of Subcontractors.* This contract and all subcontracts issued under this contract at any tier are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§(a)–(d), the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.

(a) *This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A–D, the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.*

(b) *A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.*

(c) *If a contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.*

(d) A contractor shall include in its subcontracts at any tier for work under this contract, wording that incorporates the provisions, duties, and obligations of §§(a)—(d), State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

H. – J. (text unchanged)

### **21.05.08 Mandatory Written Solicitation Requirements**

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

#### **.05 Nonvisual Access Clause.**

A. Except as provided in §B of this regulation, the following clause is a mandatory provision for each invitation for bid under COMAR 21.05.02 or request for proposals under COMAR 21.05.03 for the purchase of new or upgraded information technology:

"The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than [5] 15 percent.

"For purposes of this regulation, the phrase 'equivalent access' means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output."

B. The nonvisual access clause is not required if the procurement officer makes a determination that:

(1) The information technology is not available with nonvisual access because the essential elements of the information technology are visual and nonvisual equivalence cannot be developed; or

(2) The cost of modifying the information technology for compatibility with software and hardware used for nonvisual access would increase the cost of the procurement by more than [5] 15 percent.

C. (text unchanged)

### **21.05.09 Intergovernmental Cooperative Purchasing**

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

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

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

A. The solicitation shall contain all clauses, terms, and conditions required under this title *as well as a summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries;*

B. – C. (text unchanged)

### **21.05.13 Master Contracting**

Authority: State Finance and Procurement Article, §§12-101, 13-101, 13-102, 13-113, [and] 13-114, and 14-303, Annotated Code of Maryland

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

A. (text unchanged)

B. Terms Defined.

(1) "Designated procurement unit" means:

(a) [The Department of Budget and Management;

(b)] The Department of General Services;

[(c) The Department of Information Technology; or

(d)] (b) The Department of Transportation; or

(c) *The Department of Information Technology, only with respect to an information technology master contract executed before July 1, 2022, until the earlier of:*

(i) *the expiration date of all information technology master contracts; or*

(ii) *June 30, 2027.*

(2) – (6) (text unchanged)

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

A. The solicitation for awarding master contractor agreements shall include:

(1) – (3) (text unchanged)

(4) The mandatory solicitation requirements set forth in COMAR 21.05.08; [and]

(5) All required contract terms and conditions[.]; and

(6) A summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.

B. – G. (text unchanged)

**.05 Secondary Competition Solicitation.**

A. – C. (text unchanged)

D. The secondary competition solicitation shall include a summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.

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

**21.05.14 Auction Bids**

*Authority: State Finance and Procurement Article, §§13-102 [and] 13-111, and 14-303, Annotated Code of Maryland*

**.01 Auction Bids Authorized.**

A. A primary procurement unit may procure supplies and services using the auction bids procurement method.

B. Whenever the head of a primary procurement unit or designee determines that it is in the best interest of the State for a procurement contract to be based on auction bids, a procurement officer shall seek bids by issuing an invitation for auction bids.

**.02 Invitation for Auction Bids.**

A. Subject to subsection .02B. of this regulation, an invitation for auction bids shall include:

(1) The specifications of the procurement contract;

(2) Whether the procurement contract will be awarded based on the lowest bid price or the lowest evaluated bid price;

(3) If the procurement contract will be based on evaluated bid price, the objective measurable criteria by which the lowest evaluated bid price will be determined;

(4) The small business preference, if designated under COMAR 21.11.01.05;

(5) The date and time when bidding will commence and the date and time when bidding will end or the event upon which bidding will end.

(6) The mandatory solicitation requirements set forth in COMAR 21.05.08; and

(7) A summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.

B. In the discretion of the procurement officer, the invitation for auction bids may:

(1) Include a request for unpriced technical offers or samples;

(2) Direct bidders to submit price bids after the unit evaluates the technical offers or samples and finds they are acceptable under the criteria set forth in the invitation for auction bids; and

(3) Inform all bidders who submitted technical offers or samples of the identity of each bidder who submitted an acceptable technical offer or sample.

C. A unit shall give public notice of an invitation for auction bids in the same manner as required for an invitation for bids under COMAR 21.05.02.

D. The period of time between the date of publication of the invitation for auction bids and the date and time when bidding will commence shall be a minimum of 20 days.

**.03 Price Bids.**

A. A procurement officer shall:

(1) Receive bids in public at the time and place designated in the invitation for auction bids; and

(2) Record the amount of each bid at the time it is received.

B. The amount of a price bid shall be available for public inspection from the time it is received.

C. The identity of the bidder submitting a price bid shall not be available for public inspection until bidding has ended.

D. Price bids may not be received until after the unit has completed evaluation of the technical offers or samples.

E. A price bid may not be received at any time if the bid is submitted by a bidder whose technical offer or sample has been evaluated as unacceptable to the unit.

F. Multiple price bids are permitted in response to an invitation for auction bids. When a bidder submits multiple bids, each bid shall be judged independently and shall not revoke previous bids of that bidder.

G. Except as provided in subsection H. of this regulation, a bid is irrevocable, after receipt, for the period specified in the invitation for auction bids.

H. A procurement officer may allow a bidder to correct or withdraw a bid if correction or withdrawal is:

(1) allowed under regulations applicable to an invitation for bids under COMAR 21.05.02; and

(2) approved in writing by the Office of the Attorney General.

I. If there is more than one bidder, discussions about revised specifications or quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions.

**.04 Award**

A. After obtaining any approval required by law or regulation, the procurement officer shall award the procurement contract to the responsible bidder who submits the responsive bid that:

- (1) is the lowest bid price; or
- (2) if the invitation for auction bids so provides, is the lowest evaluated bid price.

B. If, after bids have been received, a procurement officer determines that only one responsible bidder has submitted a responsive bid, the unit may negotiate the procurement contract with that one bidder under the procedures for sole source procurement in COMAR 21.05.05.

C. After bids have been received, a procurement officer may award a procurement contract on the basis of revised bids if:

- (1) all bids are rejected under COMAR 21.06.02;
- (2) all bid prices exceed the funds available for the procurement; or
- (3) with the approval of the head of a primary procurement unit or a designee, the procurement officer determines that all bids are unreasonable as to at least one requirement and the delay that would result from issuing a new invitation for auction bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the State.

#### **.05 Invitation for Revised Auction Bids.**

A. If one of the conditions set forth under COMAR 21.05.14.04C exists, as promptly as possible, the procurement officer shall:

- (1) issue an invitation for revised auction bids, which shall state whether the award will be made without competitive negotiations; and
- (2) require a prompt response to that invitation.

B. An invitation for revised auction bids is not subject to the notice requirements in COMAR 21.05.14.02C.

C. After revised bids have been submitted, negotiations with bidders may not be conducted unless the procurement officer determines that there is a compelling reason to negotiate.

D. After revised bids have been received and any approvals required by law or regulation have been obtained, the procurement officer shall award the procurement contract to the responsible bidder who submits a responsive bid that:

- (1) is the lowest bid price; or
- (2) if the invitation for revised bids so provides, is the lowest evaluated bid price.

#### **.06 Publicizing Awards.**

Not more than 30 days after the execution and approval of a procurement contract awarded under this section, a unit shall publish notice of the award in eMaryland Marketplace.

## **21.05.15 Pay-For-Success Contracting**

Authority: State Finance and Procurement Article, §§13-101, 13-102, and 13-112.1, Annotated Code of Maryland

### **.01 Definitions.**

A. In this chapter, the following words have the meaning indicated:

B. Terms Defined.

- (1) "Aggregator" means a person that:
  - (i) provides or contracts for environmental outcomes; or
  - (ii) provides or raises capital to finance delivery of environmental outcomes.
- (2) "Environmental outcome" means a commodity that is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment, including a nutrient or carbon benefit.
- (3) "Environmental outcomes project" means a project designed to secure environmental outcomes.
- (4) "Evaluator" means a person other than an aggregator that determines whether environmental outcomes have been achieved based on defined performance measures.
- (5) "Outcome payment" means the money paid when a pay-for-success contract performance measure is met.
- (6) "Pay-for-success contracting" means a performance-based procurement method through which a unit contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of outcomes.
- (7) "Quantification plan" means a plan in which an aggregator describes:
  - (i) the method that will be used to measure or model environmental outcomes and co-benefits under a pay-for-success contract;
  - (ii) the compliance monitoring that will occur to ensure that the actions proposed in the pay-for-success contract are taken and maintained over the life of the project;
  - (iii) verification steps that will be carried out by the state to confirm model results or accurate measurement of environmental outcomes; and
  - (iv) the timeline for proposed payments under the pay-for-success contract.

### **.02 Background.**

A. The General Assembly has found and declared that:

- (1) Pay-for-success contracting shifts the risk of performance to the contractor because government payment is made only on achievement of outcomes;
- (2) Social and environmental impact investment is growing dramatically, and investors are seeking ways to finance and execute pay-for-success contracts in the State to expand the success of Chesapeake Bay restoration efforts and achieve other public outcomes; and

(3) it is in the best interest of the State to include pay-for-success contracting as a procurement option, particularly for units responsible for land conservation and environmental protection, enhancement, and restoration.

**.03 Application.**

A. A unit may enter into a pay-for-success contract only if the procurement officer of the unit determines that:

(1) the contract will produce estimated financial savings or other quantifiable public benefits for the State; and

(2) a substantial portion of the outcome payment due under the contract will be paid only after specific outcomes have been documented.

B. This chapter applies only to procurements by:

(1) the Department of Agriculture;

(2) the Department of the Environment;

(3) the Department of Natural Resources;

(4) the Department of Transportation;

(5) the Maryland Environmental Service; and

(6) the Department of General Services.

C. This chapter does not apply to the purchase of nitrogen load reductions with funds from the Clean Water Commerce Account of the Bay Restoration Fund established under Environment Article, § 9-1605.2, Annotated Code of Maryland.

D. A unit specified in paragraph §B of this regulation may enter into a pay-for-success contract with an aggregator to procure:

(1) delivery of an environmental outcomes project; or

(2) already certified environmental outcomes.

E. Other State and local entities may participate in a pay-for-success contract under this chapter in accordance with an intergovernmental cooperative purchasing agreement under COMAR 21.05.09.

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

A. A pay-for-success contract executed under this regulation shall include:

(1) a quantification plan approved by the unit;

(2) a statement of the environmental outcomes to be procured under the contract and a description of how defined performance measures will demonstrate progress in achieving these outcomes;

(3) requirements regarding the content and frequency of progress reports regarding the achievement of environmental outcomes;

(4) a methodology for calculating the amount and timing of outcome payments to an aggregator when the evaluator determines that the aggregator has achieved a defined performance measure;

(5) a statement that the basis of payment is the determination of achievement of environmental outcomes by the evaluator and that payments for those outcomes do not require itemized billing or cost documentation by the aggregator; and

(6) terms addressing: 1. compliance with State law; 2. nondiscrimination in employment; 3. contractor indemnification; 4. termination for default; and 5. the unit's right to inspect the environmental outcomes project.

B. A pay-for-success contract executed under this regulation may include provisions regarding:

(i) long-term maintenance and monitoring of environmental services, including the establishment of a stewardship fund;

(ii) a requirement that the unit hold contract funds in a reserve account for outcome payments;

(iii) for agriculture services, payment for achievement of baseline water quality requirements for nitrogen, phosphorus, or sediment; or

(iv) terminations prior to the first payment under the contract for the purpose of selling environmental outcomes without penalty to another entity or for any other reason.

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

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

B. The first review conducted under regulation §A shall include a review of all pay-for-success contracts completed under this section between July 1, 2022, and June 30, 2025.

C. The review conducted under regulation §A shall include:

(1) the cost of each project performed under a contract;

(2) the length of time taken to complete the project, from the date of notice to proceed until completion;

(3) the average cost and project duration for each project type; and

(4) whether each project met the terms of its contract.

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

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

(i) each unit for which the Service reviewed and evaluated a contract; and

(ii) in accordance with § 2-1257 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee, the Senate Budget and Taxation Committee, the House Environment and Transportation Committee, and the House Appropriations Committee.

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

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

Authority: State Finance and Procurement Article, §§15-101—15-105, Annotated Code of Maryland

#### **.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] 37 days after an agency receives a Proper Invoice.

B. – C. (text unchanged)

## **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, 15-226, 16-202, 17-401, 17-402, and 19-114; Annotated Code of Maryland; Chs. 588, 589, and 630, Acts of 2017; Ch. 403, Acts of 2019

#### **.31 Prompt Payment of Subcontractors.**

*Mandatory provisions for all contracts:*

A. *This contract and all subcontracts issued under this contract at any tier are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A—D, the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.*

B. *A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.*

C. *If a contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.*

D. *A contractor shall include in its subcontracts at any tier for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.*

### **21.07.02 Mandatory Construction Contract Clauses**

Authority: State Finance and Procurement Article, §§12-101, 13-216, 13-218, 13-225, 15-226, and 17-801—17-804, Annotated Code of Maryland

#### **.05-2 Prompt Payment of Subcontractors.**

Mandatory provisions for all construction contracts:

A. This contract and all subcontracts issued under this contract *at any tier* are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A—D, the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.

B. – C. (text unchanged)

D. A contractor shall include in its subcontracts *at any tier* for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

### **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, 15-226, 16-202, 17-401, 17-402; Annotated Code of Maryland; Ch. 630, Acts of 2017

#### **.27 Prompt Payment of Subcontractors.**

*Mandatory provisions for all contracts:*

A. *This contract and all subcontracts issued under this contract at any tier are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A—D, the terms "undisputed amount", "prime contractor", "contractor", and "subcontractor" have the meanings stated in COMAR 21.10.08.01.*

B. *A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.*

C. *If a contractor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.*

D. *A contractor shall include in its subcontracts at any tier for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.*



## Subtitle 08 SUSPENSION AND DEBARMENT

### 21.08.03 Debarment

Authority: State Finance and Procurement Article, §§11-205.1, 12-101, and 16-101—16-312; State Government Article, §§10-201—10-217; Annotated Code of Maryland

#### .03 Debarment of Persons for Cause from State Contracts.

A. A person may be debarred from entering into a contract with the State if that person or any of its officers, partners, controlling stockholders, principals, or other persons substantially involved in its contracting activities has been:

(1) – (8) (text unchanged)

(9) Debarred from federal contracts under the Federal Acquisition Regulation, as provided in 48 C.F.R. Chapter 1, *or Federal Executive Order 11246, as amended, due to discriminatory hiring practices in the State*; [or]

(10) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under State Finance and Procurement Article, Title 19, Annotated Code of Maryland, with regard to a public or private contract[.]; *or*

(11) *Been found to have willfully or knowingly violated Title 20, Subtitle 6 of the State Government Article if the finding was made by a court and the decision of the court became final, or the finding was made in a contested case under the Administrative Procedure Act and the finding was not overturned on judicial review.*

B. (text unchanged)

C. A person may be debarred from entering into a contract with the State if the Board finds:

(1) (text unchanged)

(2) That the person is a successor, assignee, subsidiary, or affiliate of a suspended or debarred person; [or]

(3) One of the following violations of a contract provision that is sufficiently serious to justify debarment:

(a) (text unchanged)

(b) The failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts within the preceding 5 years unless the failure to perform or the unsatisfactory performance was caused by acts beyond the control of the person[.]; *or*

(4) *That the person persistently fails to meet contract goals in the absence of mitigating factors under the criteria established under State Finance and Procurement Article, §14-305(C)(2), Annotated Code of Maryland; debarment under this subsection shall be for a period not exceeding 3 years.*

D. (text unchanged)

## Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES

### 21.10.08 [State Construction Contracts—]Prompt Payment of Subcontractors

Authority: State Finance and Procurement Article, §15-226, Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Prime contractor" means a person or firm that has a State procurement contract [for construction] with a unit.

(3) Contractor.

(a) "Contractor" means a person or firm that:

(i) Has an agreement to perform all or some of the work required under a State [construction] contract; and

(ii) (text unchanged)

(b) (text unchanged)

(4) "Subcontractor" means a person or firm that has an agreement with a contractor to perform all or some of the contractor's work under a State [construction] contract.

#### .02 Policy.

It is the policy of the State that a contractor shall promptly pay to a subcontractor any undisputed amount to which the subcontractor is entitled for work under a State procurement contract [for construction].

#### .06 Remedies.

A. – B. (text unchanged)

C. If, at the completion of the second meeting, the representative of the unit determines that the contractor continues to be delinquent in payments owed to the subcontractor, the representative:

(1) – (2) (text unchanged)

(3) If the contractor is not a prime contractor, may order that the prime contractor act as a representative of the unit and:

(a) Pay or cause payment of an amount determined as undisputed, together with any penalty assessed against the contractor under §C(4) of this regulation, to be made to the subcontractor from monies otherwise due or that may become due under the State [construction] contract for the contractor's work;

(b) From monies otherwise due or that may become due under the State [construction] contract for the contractor's work, place a payment for an undisputed amount and any penalty in an interest-bearing escrow account rather than making the payment to the subcontractor; or

(c) (text unchanged)

(4) (text unchanged)

D. – E. (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

#### .02 Small Business Procurement Programs.

A. – B. (text unchanged)

C. [The] *Except as provided in subsection .06A(3) of this regulation, the small business reserve program applies to all procurements by a procurement unit and restricts award of a contract to certified small businesses only.*

#### .06 Small Business Reserve Program.

A. Applicability.

(1) All procurements by a procurement unit are eligible for designation as small business reserve procurements.

(2) *A procurement with a total dollar value between \$50,000 and \$500,000 shall be designated for the small business reserve.*

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

(a) Preference procurements made from a preference provider (Maryland Correctional Enterprises, community service providers, Blind Industries and Services of Maryland, individual-with-disability-owned businesses, and the Maryland Vending Facilities Program for the Blind) under COMAR 21.11.05 and 21.11.09 [are exempt from the small business reserve].

(b) Procurements involving expenditures of federal dollars, [are exempt] to the extent that their inclusion in the program is in violation of federal law or grant provisions.

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

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

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

B. – E. (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; Chs. 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; Ch. 322, Acts of 2021

#### .03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) – (5) (text unchanged)

(6) *"Industry type" means the following procurement categories:*

(a) *Construction;*

(b) *Architectural and engineering services and other construction-related professional services;*

(c) *Maintenance;*

(d) *Information technology;*

(e) *Services; and*

(f) *Goods, supplies, and equipment.*

[(6)] (7) *"Joint venture" means an association of two or more persons to carry out a single business activity for a limited purpose or time.*

[(7)] (8) *"MBE classification" means the racial, ethnic, or gender classification, as stated in §B(15) of this regulation, assigned to the firm by the certification agency upon the firm obtaining MBE certification.*

[(8)] (9) *"Minority business enterprise (MBE)" has the meaning stated in COMAR 21.01.02.01B(54).*

[(9)] (10) *"Office of Minority Affairs" means the Governor's Office of Small, Minority & Women Business Affairs.*

[(10)] (11) *"Ownership" means:*

(a) – (c) (text unchanged)

[(11)] (12) *Personal Net Worth.*

(a) – (c) (text unchanged)

[(12)] (13) *"Procurement agency" means a principal department or independent unit of the Executive Branch of the State, not otherwise exempted from application of this chapter, that is authorized by law to procure.*

[(13)] (14) *Race Neutral Methodologies.*

(a) – (b) (text unchanged)

[(14)] (15) *Socially Disadvantaged Individual.*

(a) – (b) (text unchanged)

[(15)] (16) *Socially and Economically Disadvantaged Individual.*

(a) – (c) (text unchanged)

[(16)] (17) "Solicitation notice" means public notice of a solicitation for bids, offers, or expressions of interest which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of but is not limited to:

(a) – (e) (text unchanged)

**.09 Procurement Solicitations.**

A. – B. (text unchanged)

C. MBE Subcontracting Provisions.

(1) (text unchanged)

(2) Solicitation Content. Each solicitation identified by a procurement agency as having subcontract opportunities shall contain the clauses required by COMAR 21.05.08.03 and .04. *The solicitation shall include a summary of the factors used to determine the expected degree of minority business enterprise participation, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified minority business enterprises in those industries.* The solicitation shall also contain provisions requiring bidders or offerors including those bidders or offerors that are certified MBEs to:

(a) – (e) (text unchanged)

(3) – (8) (text unchanged)

D. – G. (text unchanged)

**.17 Reporting.**

A. Each procurement agency shall make a report annually within 90 days following the close of the fiscal year to the Governor's Office of Small, Minority & Women Business Affairs, the Department of Transportation, and, subject to State Government Article, [§2-1246] §2-1257, Annotated Code of Maryland, to the Joint Committee on Fair Practices and State Personnel Oversight that includes *for the preceding fiscal year:*

(1) [The total number, value, and procurement category of its procurements from State-certified MBEs as prime contractors, and separately as subcontractors, by business name, and specific MBE classification;] *The total number and value of procurement contracts between the procurement agency and certified MBEs, by specific MBE category and by industry type, including whether the MBE participated as a prime contractor or as a subcontractor;*

(2) [The percentages, by specific classification of minority business enterprise, that purchases under §A(1) and (2) of this regulation represent of the total number and value of its procurements for the fiscal year just ended;] *The percentage that those procurement contracts represent, by specific MBE category and by industry type, of the total number and value of procurement contracts;*

(3) *The total number and the names of certified MBEs that participated as prime contractors or as subcontractors on procurement contracts awarded by a unit;*

(4) *For each MBE including in the report under §A(3) of this regulation, a list of all procurement contracts awarded by the procurement agency to that MBE, including a description of the contract and industry type;*

(5) *The results of each compliance assessment conducted by the procurement agency under Regulation .13 of this chapter, including for each contract completed during the fiscal year:*

(a) *The names of each prime contractor and each subcontractor that participated in the contract;*

(b) *The type of good or service provided by the contract;*

(c) *The MBE participation goal for the contract;*

(d) *Whether a waiver was granted for the MBE participation goal;*

(e) *The total dollar value of payments made to each prime contractor and by each prime contractor to each subcontractor during the contract term;*

(f) *Whether each subcontractor is a certified MBE; and*

(g) *If applicable, a description of factors that may have contributed to failure to achieve the MBE participation goal for the contract, including documented nonperformance or unavailability of a MBE;*

[(3)] (6) The number of waivers granted pursuant to Regulation .11 of this chapter; and

[(4)] (7) An evaluation by the procurement agency of the success of its MBE program, which evaluation shall include a brief description of the procurement agency's outreach efforts to MBE prime contractors and MBE subcontractors.

B. *As to procurement contracts for architectural services and engineering services reported under §A of this regulation, the report shall identify by separate category of MBE procurements for:*

(1) *architectural services; and*

(2) *engineering services.*

C. *A report under §A of this regulation shall be in a form prescribed by the Governor's Office of Small, Minority, and Women Business Affairs and the Department of Transportation and approved by the Board of Public Works.*

D. *The Special Secretary for the Governor's Office of Small, Minority, and Women Business Affairs may waive the requirement for a procurement agency to report MBE participation by industry type under §A of this regulation if the spending threshold for the industry type is too low for the unit to provide sufficient data.*

[B.] E. Each procurement agency shall submit to the Board of Public Works and the Governor's Office of Small, Minority & Women Business Affairs by July 31 of each year the report of waivers required under Regulation .11E of this chapter.

[C.] F. Each procurement agency shall furnish any other information or periodic reports requested by the Governor's Office of Small, Minority & Women Business Affairs or the Department of Transportation in connection with MBE certification and

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

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

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

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

### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) – (2) (text unchanged)

(2-1) *"Employment Works Program" means the program established in the Department of General Services by State Finance and Procurement Article, §14-108, Annotated Code of Maryland.*

(3) (text unchanged)

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

(a) – (c) (text unchanged)

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

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

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

(5) – (6.1) (text unchanged)

(7) "Prevailing average market price" means the current averaged competitive price as determined by the [appropriate pricing authority] *Pricing and Selection Committee for Preferred Providers* for the same or substantially similar supply or service provided by State Use Industries.

(8) ["Pricing authority" means the Department of General Services or the Pricing and Selection Committee for Blind Industries and Services of Maryland and the Employment Works Program] *"Pricing and Selection Committee for Preferred Providers" means the pricing authority responsible for reviewing and verifying the prevailing average market prices as proposed by Maryland Correctional Enterprises, setting the prices of supplies and services that Blind Industries and Services of Maryland provides to reflect the fair market prices for those supplies and services, and determining the fair market price of supplies, services, and other sales that the Employment Works Program community services providers and individual with disability owned businesses provide, among other duties in accordance with State Finance and Procurement Article, §14-106, Annotated Code of Maryland.*

(9) "Selling entity" means Maryland Correctional Enterprises, the Blind Industries and Services of Maryland, *Employment Works Program* community service providers, or individual-with-disability-owned businesses.

(10) (text unchanged)

### **.02 Scope.**

A. – E. (text unchanged)

F. Services procured from [a] *an Employment Works Program* community service provider are not subject to the cost savings requirements of State Personnel and Pensions Article, §13-405, Annotated Code of Maryland.

### **.03 Determining Fair Market Price.**

A. In determining fair market prices for services or supplies, [a pricing authority] *the Pricing and Selection Committee for Preferred Providers* may consider:

(1) – (5) (text unchanged)

B. If the fair market price for a service or supply cannot be determined absent a competitive procurement, the solicitation shall notify prospective bidders or offerors that one or more selling entities may respond to the solicitation and that any subsequent contract may be awarded to a selling entity if its bid or offer is deemed a fair market price by the [appropriate pricing authority] *Pricing and Selection Committee for Preferred Providers*.

C. (text unchanged)

### **.04 Duties of [Pricing Authorities] *the Pricing and Selection Committee for Preferred Providers*.**

A. The [Secretary of General Services or designee] *Pricing and Selection Committee for Preferred Providers* shall:

(1) – (6) (text unchanged)

(7) *Review and verify the prevailing average market prices, as proposed by Maryland Correctional Enterprises, when changes are made to the pricing of existing goods and services that are available from Maryland Correctional Enterprises or for new goods or services that Maryland Correctional Enterprises intends to make available.*

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

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

[(2)] (9) Ensure that supplies [and], services, *or other sales* provided by Blind Industries and Services of Maryland or [a] *an Employment Works Program* community service provider create work opportunities for individuals who have a mental or physical disability, including blindness, for which Blind Industries and Services of Maryland or the *Employment Works Program* community service provider was established to assist;

[(3)] (10) Choose appropriate supplies [and], services, *or other sales* for *Employment Works Program* community service providers and individual-with-disability-owned businesses to offer for procurement;

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

[(5)] (12) Adjust prices for the supplies [and], services, *or other sales* that Blind Industries and Services of Maryland, *Employment Works Program* community service providers[,] and individual-with-disability-owned businesses provide, in accordance with market conditions;

[(6)] (13) At the request of [a] *an Employment Works Program* community service provider or an individual-with-disability-owned business, review and, if appropriate, change the price of a supply [or], service, *or other sale*;

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

[(8)] (15) Maintain a current list of *Employment Works Program* community service providers and individual-with-disability-owned businesses;

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

[(10)] (17) Maintain current lists of supplies [and], services, *or other sales* that *Maryland Correctional Enterprises*, Blind Industries and Services of Maryland, and *Employment Works Program* community service providers[,] and individual-with-disability-owned businesses provide; and

[(11)] (18) Periodically review and revise the lists of supplies [and], services, *or other sales* maintained in accordance with §B(10) of this regulation, and send any revised list to the [Secretary of General Services] *Chief Procurement Officer* who shall make the lists available to each person responsible for buying supplies or services for the State or a State aided or controlled entity.

#### **.05 Coordination.**

The [pricing authorities] *Pricing and Selection Committee for Preferred Providers* shall meet at least annually, at the call of the Secretary of General Services, in order to:

A. – C. (text unchanged)

#### **.06 Responsibilities of Selling Entities.**

Each selling entity shall:

A. Annually, or more frequently if required, transmit to the [appropriate pricing authority as determined by Regulation .04 of this chapter] *Pricing and Selection Committee for Preferred Providers*, in the form and by the date prescribed by [that pricing authority] *Pricing and Selection Committee for Preferred Providers*, a complete listing of services and supplies the selling entity reasonably will be able to provide for State procurement during the 12-month period following scheduled publication of the master list, together with the suggested fair market prices for each service or supply;

B. – E. (text unchanged)

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

A. (text unchanged)

B. Exceptions. A procurement agency is not required to obtain a supply or service from a selling entity if:

(1) (text unchanged)

(2) The [appropriate pricing authority as determined by Regulation .04 of this chapter] *Pricing and Selection Committee for Preferred Providers* deems the selling entity's price for the supply or service to exceed its fair market price;

(3) – (5) (text unchanged)

C. (text unchanged)

D. Estimates of Purchases. A procurement agency shall notify at least annually [each pricing authority] *the Pricing and Selection Committee for Preferred Providers* of the procurement agency's forecast of recurring purchases during the next fiscal year of those supplies and services included in the master list.

E. – F. (text unchanged)

## **21.11.14 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; Ch. 740, Acts of 2018; Ch. 79, Acts of 2021

**.04 Procurement Agency Responsibility.**

A. (text unchanged)

B. The Department of General Services, 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.

C. – D. (text unchanged)

## **Subtitle 13 PROCUREMENT REPORTING REQUIREMENTS**

### **21.13.01 Reporting Requirements**

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

**.08 Report of Contracts Performed Outside of the State.**

Each department shall prepare and submit an annual report within 90 days following the close of the fiscal year to the Governor, and subject to State Government Article, [§2-1246] §2-1257, Annotated Code of Maryland, to the General Assembly, of each procurement contract within its jurisdiction awarded during the preceding fiscal year that was exempt from the notice requirements of State Finance and Procurement Article, §§13-103(c) and 13-104(c), Annotated Code of Maryland, because the procurement contract reasonably was expected to be performed entirely outside the State or the District of Columbia. The report shall, at a minimum, include:

A. – D. (text unchanged)

**.14 Report on Green Purchasing.**

A. (text unchanged)

B. Green Purchasing Committee. On or before October 1 of each year, the Maryland Green Purchasing Committee, as established in State Finance and Procurement Article, §14-410, Annotated Code of Maryland, shall report to the General Assembly on the Committee's activities and the progress made on the implementation of the Green Maryland Act of 2010. The report is subject to State Government Article, [§2-1246] §2-1257, Annotated Code of Maryland.

**.18 Report on Cybersecurity Infrastructure Procurements**

*On or before December 1 each year, the Department of General Services shall submit a report to the Board of Public Works on procurements made under COMAR 21.02.01.04B(10) that shall include for each procurement:*

*A. The purposes of the procurement;*

*B. The name of the contractor;*

*C. The contract amount;*

*D. The method of procurement utilized;*

*E. The number of bidders who bid on the procurement; and*

*F. The contract term.*