

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

**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

**Notice of Proposed Action**

[08-122-P]

The Secretary of General Services proposes to amend Regulations .01, .05, and .06 and adopt new Regulations .07—  
.12 under **COMAR 21.11.01 Small Business Procurements**.

**Statement of Purpose**

The purpose of this action is to define terms and to clarify, amend, and adopt regulations pertaining to small  
business procurement.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or  
stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** It is anticipated that the implementation of these provisions will require the  
hiring of a full-time employee at a Grade 12, Step 1 level, with an approximate salary of \$32,000 to \$35,000.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	\$32,000 —\$35,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. To properly audit the self-certified companies, hiring of a full-time employee (Grade 12) will be required.

### **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 Jerry D. Krasnick, Compliance Analyst, Business Enterprise Office, Department of General Services, 301 W. Preston St., M-9, Baltimore, MD 21201, or call 410-767-4272, or email to [jerry.krasnick@dgs.state.md.us](mailto:jerry.krasnick@dgs.state.md.us), or fax to 410-333-5482. Comments will be accepted through June 9, 2008. A public hearing has not been scheduled.

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

A. (text unchanged)

B. Terms Defined.

(1) *"Affiliate" means a business that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another business under the criteria and standards set forth in 13 CFR §121.103, as amended, which is incorporated by reference.*

[(1)] (2) (text unchanged)

(3) *"Construction operations" means the process of building, altering, repairing, improving, or demolishing any structure, building, or other improvement to real property.*

[(2)] (4) (text unchanged)

(5) *"Dominant in field of operation" means, with respect to a business, the exercise or ability to exercise a controlling or major influence, on a Statewide basis, in a field of operation in which a number of businesses are primarily engaged.*

(6) *"Gross sales" means the total amount of gross receipts or sales for all categories of operation reported by a business on its federal income tax return.*

(7) *"Independently owned and operated" means a business that is not managed by another business under the criteria and standards in 13 CFR §121.103, as amended, which is incorporated by reference.*

(8) *Manufacturing Operations.*

(a) *"Manufacturing operations" means the production of materials, supplies, articles, or equipment on a regular basis on premises owned or leased by a business.*

(b) *"Manufacturing operations" does not include operations by a business that performs only minimal operations on or minimal assembly of items being procured.*

(9) *"Retail operations" means the sale of merchandise, without transformation, in small quantities to the general public, and the rendering of services incidental to the sale of the merchandise.*

(10) *Service Operations.*

(a) *"Service operations" means the rendering of time, effort, or work.*

(b) *"Service operations" includes maintenance services, construction-related services, architectural services, engineering services, the maintenance or routine operation of an existing improvement to real property, services provided in connection with an energy performance contract, and housekeeping, security, janitorial, and landscaping services.*

(c) *"Service operations" does not include the furnishing of a specific physical product, other than reports incidental to the required performance.*

(11) *"Small business reserve" means a procurement by a designated unit that is limited to responses from certified small businesses.*

(12) *"Subsidiary" means a business:*

(a) *In which more than 50 percent of its assets, capital stock, or voting securities are held directly or through attribution by another business; or*

(b) *That as a practical matter is controlled by another business.*

(13) *"Wholesale operations" means:*

(a) *The purchase or sale of goods for resale to other businesses, without transformation; and*

(b) *The rendering of services incidental to the sale of the goods.*

**.05 Small Business Preference Program.**

A. (text unchanged)

B. Procedures.

(1)—(2) (text unchanged)

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

(4)—(5) (text unchanged)

**.06 Small Business Reserve Program.**

A. Applicability.

(1) All procurements by the designated procurement units listed under Regulation [.01A] .01B of this chapter are eligible for designation as small business reserve procurements.

(2) (text unchanged)

B.—H. (text unchanged)

**.07 Small Business Reserve Size Standards.**

*A. The procurement officer shall specify the following size standards in §A(1)—(5) of this regulation as applicable to a small business reserve procurement based on the principal nature of the goods and services to be acquired:*

*(1) Wholesale:*

*(a) The wholesale operations of the business and its affiliates did not employ more than an average of 50 persons during the most recent 12 months; and*

*(b) The gross sales of the business and its affiliates did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*

*(2) Retail:*

*(a) The retail operations of the business and its affiliates did not employ more than an average of 25 persons; and*

*(b) The gross sales of the business and its affiliates did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*

*(3) Manufacturing:*

*(a) The manufacturing operations of the business and its affiliates did not employ more than an average of 100 persons; and*

*(b) The gross sales of the business and its affiliates did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*

*(4) Services:*

*(a) The services operation of the business and its affiliates did not employ more than an average of 100 persons; and*

*(b) The gross sales of the business and its affiliates did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years; and*

*(5) Construction:*

*(a) The construction operations of the business and its affiliates did not employ more than an average of 50 persons in the most recently completed 12 months; and*

*(b) The gross sales of the business and its affiliates did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.*

*B. A business is not eligible for contract award under the small business reserve program if the business exceeds the size standard specified in a solicitation.*

**.08 Numbers of Persons Employed.**

*A. The number of persons employed in an operations category of a business includes:*

*(1) Persons employed on a full-time, part-time, temporary, or contractual basis; and*

*(2) Independent contractors.*

*B. If a business has been in existence for 1 year, the specific employment level for a business at the end of each calendar quarter, that is, March 31, June 30, September 30, and December 31, shall be averaged to determine number of persons employed.*

*C. If a business has not been in existence for 1 year, the specific employments levels for a business at the end of each calendar month shall be averaged to determine number of persons employed.*

*D. For newly formed businesses, the number of persons employed shall be based on current and projected employment levels.*

***.09 Gross Sales.***

*A. If a business has not existed for 3 years, the gross sales average shall be the average for each year or part of a year during which the business has been in existence.*

*B. If a business has not filed a federal income tax return for a fiscal year, gross sales shall be determined under the federal income tax return requirements for that fiscal year.*

*C. For newly formed businesses, the determination of gross sales shall be based on projected gross sales.*

***.10 Certification as Small Business.***

*A. A business may self-certify by completing an online application through the Department of General Services.*

*B. A business shall:*

*(1) Update its self-certification to accurately report its status at the time it responds to a solicitation; and*

*(2) Timely report any changes to its size between solicitation and award*

*C. A procurement officer may at any time request that the Department of General Services review the eligibility of the business for an award of a small business reserve contract.*

*D. A certification expires 1 year after it is submitted, and the Department of General Services shall remove the name of the business from the list of certified small businesses it maintains.*

*E. A business may reapply for certification by completing an online application through the Department of General Services.*

*F. The Department of General Services may conduct an audit of the financial, corporate, and business records and conduct an investigation of any business that applies for certification as a small business for the purpose of determining eligibility for awards or compliance with the requirements of the small business reserve program.*

*G. The Department of General Services shall notify a business in writing if the Department of General Services determines that the business is not eligible for certification as a small business.*

*H. A business that has been determined not to be eligible based on self-certification may submit a written request to the Department of General Services for reconsideration. Written reconsideration determinations issued by the Department of General Services are final and not subject to appeal.*

***.11 Required Documentation.***

*A. A business that has self-certified as a small business shall maintain documents identified by the Department of General Services for immediate review and copying on demand by the Department of General Services. The Department of General Services shall publish a list of these required documents on its website. Failure to produce required documents immediately on demand shall result in the determination that a business is not eligible for certification as a small business.*

*B. A business shall provide any other documentation requested by the Department of General Services related to certification. Failure to timely submit requested documentation may result in the determination that a business is not eligible for certification as a small business.*

*C. On request by the Department of General Services, a business seeking certification or recertification as a small business shall affirm in writing that, other than those specifically identified and provided to the Department of General Services for review, there are no written, oral, or tacit agreements concerning the control and operation of the business between persons or businesses associated with the business.*

*D. As a matter of responsibility, a business shall include in its response to a solicitation:*

*(1) A certification that it meets the requirements of the small business reserve program and the size standard specified in a solicitation; and*

*(2) Its small business certification number.*

***.12 Small Business Reserve Protests.***

*A. A procurement officer may accept a self-certification for the purpose of contract award in the absence of a written protest which causes the procurement officer to question the eligibility of a business for award of a small business reserve contract. On receipt of a protest, the procurement officer shall request that the Department of General Services review the eligibility of the business for an award of a small business reserve contract.*

*B. A protest based on eligibility for award of a small business reserve contract shall:*

*(1) Be sufficiently specific to provide reasonable notice as to the basis on which the protested size of the business is questioned; and*

*(2) State the basis for the belief or allegation in the protest.*

*C. A protest merely alleging that the protested business is not small or is affiliated with unnamed other businesses does not specify adequate grounds for the protest and shall be dismissed by the procurement officer.*

*D. On receipt of a protest based on eligibility for award of a small business reserve contract, the procurement officer shall request that the Department of General Services issue a written determination of eligibility to be considered for award. The procurement officer shall accept the Department of General Services' determination as final and shall issue a decision on the protest in accordance with COMAR 21.10.02.09.*

*E. A protest based on eligibility to participate in small business reserve procurements is subject to the requirements and procedures set forth for protests in COMAR 21.10.02 and 21.10.03.*

ALVIN C. COLLINS  
Secretary of General Services