

Title 21
STATE PROCUREMENT REGULATIONS

Subtitle 05 PROCUREMENT METHODS

21.05.07 Small Procurement Regulations (\$25,000 or Less)

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

Notice of Proposed Action

[09-175-P]

The Board of Public Works proposes to amend Regulations .01, .04, and .06 under **COMAR 21.05.07 Small Procurement Regulations (\$25,000 or Less)**. This action was considered at a public meeting on March 18, 2009, notice of which was published pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Require notice of procurements over \$15,000 and not more than \$25,000 in eMaryland Marketplace; and
- (2) Raise the threshold for the three categories of small procurement to reflect increased costs in labor and materials purchased by the State.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Requiring notice of higher value small procurements in eMaryland Marketplace is expected to increase competition and lower procurement costs. Raising the threshold of small procurement categories should reduce administrative costs for State agencies.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	(E-)	Indeterminate
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: (+) Indeterminate

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

B. Changes should decrease administrative costs for State agencies.

F. Notice in eMaryland Marketplace should open competition for small procurements.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Notice in eMaryland Marketplace should expand opportunities for small businesses to compete for small procurement contracts.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mary Jo Childs, Procurement Advisor, Board of Public Works, 80 Calvert Street, Room 117, Annapolis, MD 21401, or call 410-260-7335, or email to mchilds@comp.state.md.us, or fax to 410-974-5240. Comments will be accepted through July 20, 2009. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

[(2) "Corporate purchasing card" means a bank card issued to a State employee under the State's Corporate Purchasing Card Program that may be used to purchase category I small procurement requirements pursuant to the provisions of this chapter.]

[(3)] (2)—[(4)] (3) (text unchanged)

[(5) "Published solicitation" means the written description of the procurement posted on a bid board, published in a newspaper of general circulation, or in an electronic media generally available to the business community at least 3 working days before responses are due.]

[(6)] (4) (text unchanged)

[(7)] (5) "Written solicitation" means the written description of [a small procurement, or notice of its availability, furnished to a vendor who reasonably may be expected to provide the required item] *the procurement that, at least 3 working days before responses are due, is:*

(a) Posted on a bid board; or

(b) *Published in a newspaper of general circulation or in eMaryland Marketplace.*

.04 Categories.

Small procurements are classified in three categories:

A. Category I Small Procurements—~~[\$2,500]~~ *\$5,000* or less;

B. Category II Small Procurements—More than ~~[\$2,500]~~ *\$5,000* but not more than ~~[\$10,000]~~ *\$15,000*; and

C. Category III Small Procurements—More than ~~[\$10,000]~~ *\$15,000* but not more than \$25,000, and, if a construction procurement by the Department of General Services, not more than \$50,000.

.06 Standards.

A. Solicitation Objective.

(1) (text unchanged)

(2) Minority Business Enterprises.

~~[(a)]~~ In addition to the solicitation objective set forth in §A(1) of this regulation, each procurement agency shall solicit bids or offers from a sufficient number of certified minority business enterprises listed in the Central Directory, under COMAR 21.11.03.06], for the subject matter of the procurement as is likely to result in certified MBE responses to the solicitation.

(b) Certified minority business enterprise bidders or offerors may be solicited from among those entities listed in the Central Directory established under COMAR 21.11.03.06].

(3) Single Bid. If only one responsive bid or acceptable offer is received in response to a solicitation, an award may be made to the bidder or offeror if the procurement officer ~~[concludes]~~ *determines* that the price submitted is fair and reasonable, and that the other vendors had reasonable opportunity to respond.

(4) Small Businesses. In addition to the solicitation objectives set forth above, procurement agencies shall, consistent with law, attempt to solicit bids or offers from small businesses selected from the *certified* small business ~~[vendor lists]~~ *list* under COMAR 21.11.01.04.

B. Solicitation Methods and Use.

(1) The acceptable methods of soliciting bids or offers from vendors for small procurements are oral solicitation~~[,] and~~ written solicitation, ~~[and published solicitation]~~ as defined in Regulation .01 of this chapter.

(2) The departments may use ~~[any one]~~ *either or both* of the solicitation methods specified in §B(1) of this regulation for Categories I and II Small Procurements. *If both oral and written solicitations are used, procurement agencies shall ensure that the solicitation terms are consistent.*

(3) ~~[The]~~ *Except for sole source procurement,* procurement agencies shall use written ~~[and published]~~ solicitations in attempting to achieve Category III solicitation objectives. Oral solicitations may be used as an addition to the written ~~[and published]~~ solicitations. *If both oral and written solicitations are used, procurement agencies shall ensure that the solicitation terms are consistent.*

(4) *All Category III solicitations shall be posted on eMaryland Marketplace. A copy of each Category III solicitation shall be sent in electronic format to the Governor's Office of Minority Affairs concurrently with [mailing the solicitation to potential bidders or offerors] posting on eMaryland Marketplace.*

(5) Electronically transmitted bids or offers may be accepted for small procurements *if the procurement agency specifically authorizes electronically transmitted bids or offers in the solicitation.*

C. Standards for Written [and Published] Solicitations. A written [or published] solicitation used for a small procurement shall contain, at a minimum, the following elements:

(1)—(4) (text unchanged)

(5) The name and telephone number of the procurement officer [to whom inquiries regarding the solicitation may be directed].

D. Basis [For] *for* Award. The basis for award shall be:

(1)—(2) (text unchanged)

(3) In the event of tie bids, the provisions of COMAR 21.05.02.14 shall [be utilized to] determine the successful bidder.

E. Contract Documentation. [Each small procurement shall be evidenced by the] *The following documentation is required for each small procurement:*

(1) Small Procurements of [\$2,500] *\$5,000* or less:

(a) [Contract type—oral or written;

(b) Minimum evidence:

(i) For oral [contracts] *solicitations—a contract shall be documented by a receipt, invoice, repair order, packing slip, or voucher; and*

[(ii)] (b) For written [contracts] *solicitations—a contract shall be documented by a purchase order or contract; and*

[(iii)] For purchases made with a corporate purchasing card—a charge slip or a telephone purchasing card log, and at least a sales slip, packing slip, cash register receipt, or repair order.]

(2) Small Procurements [exceeding \$2,500:] *Exceeding \$5,000. A written contract is required in the form of a*

[(a) Contract type—written;

(b) Minimum evidence—A] purchase order or other form of contract.

F. Small Procurement Written Contract Content. Any purchase order or other [writing] *form of contract* used for small procurements shall contain the following elements:

(1)—(6) (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)—(3) (text unchanged)

(4) Changes. “This Contract may be amended only with the written consent of both parties. Amendments may not *significantly* change [significantly] the scope of the Contract (including the Contract price).”

(5)—(8) (text unchanged)

H. (text unchanged)

I. Small Procurement Record.

(1) Each Department shall establish *written* procedures for maintaining small procurement records. These records shall be maintained by the using agency until audited or for a period of 3 years after final payment, whichever occurs last.

[(2) The type of records required for small procurements varies according to category.]

[(3)] (2) Minimum record requirements applicable to [oral and written] *small procurement* contracts are as follows:

(a) Category I Small Procurement *Contracts Resulting from Oral* [Contracts] *Solicitations*:

(i) Name *and telephone number* of person expending funds;

(ii) (text unchanged)

(iii) Name *and address* of contractor;

(iv) Receipt, invoice, *repair order, packing slip,* or voucher;

(v) (text unchanged)

(b) Category I Small Procurement *Contracts Resulting from Written* [Contracts] *Solicitations*:

(i) Name *and telephone number* of responsible procurement officer;

(ii) (text unchanged)

(iii) Name *and address* of contractor;

(iv)—(vi) (text unchanged)

(vii) Copy of written [or published] solicitation, if used;

(viii) (text unchanged)

[(c) Category I Small Procurements made with corporate purchasing cards:

(i) Name of authorized purchaser;

(ii) Date of purchase;

(iii) Name of vendor;

(iv) Charge slip or telephone purchasing card log;

(v) Itemized sales slip, itemized packing slip, itemized cash register receipt, or itemized repair order;

(vi) Copy of written or published solicitation, if used;

(vii) Copy of bid board or newspaper notice, if used.]

[(d)] (c) Category II and III Small Procurement *Contracts Resulting from* Written [Contracts] *Solicitations*:

(i) Name *and telephone number* of responsible procurement officer;

(ii) (text unchanged)

(iii) Name *and address* of contractor;

(iv)—(vi) (text unchanged)

(vii) Bid or offer documentation including names of *all vendors directly solicited*, copies of any written bids or offers received, bid or offer amounts, statement signed by the procurement officer detailing basis of award, identification of minority business enterprises and small businesses *directly solicited*, [if applicable,] and, when only one bid or offer is received in response to a solicitation, an explanation for the lack of a greater response;

(viii) Copy of written solicitation[, if used];

(ix) Copy of *eMaryland Marketplace notice*, and copy of bid board or newspaper notice, if used;

(x) (text unchanged)

(xi) For [category] *Category III [small procurements] Small Procurements*, a copy of certification by the appropriate fiscal authority of fund availability to satisfy the contractual requirement.

J. Reporting.

(1) [Small] *Procurement agencies are not required to report small procurements* [are not required to be reported] in the annual reports prescribed by State Finance and Procurement Article, §15-111, Annotated Code of Maryland.

(2) [Small] *Procurement agencies are not required to report small procurement* [solicitations and] awards [need not be published] in eMaryland Marketplace.

SHEILA McDONALD
Executive Secretary
Board of Public Works