**Government Contracting in Maryland**

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**Fundamentals of State Procurement**

*by Dana Dembrow*

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**Government Contracting in Maryland**

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**by: Dana Dembrow**

**Introduction**

This Manual reviews the General Procurement Law of the State of Maryland as set forth in Division II of the State Finance and Procurement Article of the Maryland Annotated Code (SF&P) and implemented by Title 21 of the Code of Maryland Regulations (COMAR). It is intended to give the reader a practical understanding of one of the few functions of State government that directly impacts virtually every agency and public need. It is not a substitute for the various procurement policies that exist specific to particular units of State government, but instead provides a general overview of common laws, regulations, duties and practices.

**The Purpose of Maryland Procurement Law**

State government contracting is substantial. The Governor’s Office of Minority Affairs (GOMA) reports that in the modern era the State spends several billion dollars annually purchasing goods and services from the private sector.[[1]](#footnote-1) Naturally, oversight of spending decision-making and action at this significant a level of expenditure of public resources is vital, vast and complex. As intimated above, only some of the principal procurement processes in Maryland are reviewed below.

The high-minded objectives of the State’s procurement laws are indeed laudable. They include:

1. Providing for increased confidence in State Procurement;
2. Ensuring fair and equitable treatment of all persons who deal with the State procurement system;
3. Providing safeguards for maintaining a State procurement system of quality and integrity;
4. Fostering effective broad-based competition in the State through support of the free enterprise system;
5. Promoting increased long-term economic efficiency and responsibility in the State by encouraging the use of recycled materials;
6. Providing increased economy in the State procurement system;
7. Getting the maximum benefit from the purchasing power of the State;
8. Simplifying, clarifying, and modernizing the law that governs State procurement;
9. Allowing the continued development of procurement regulations, policies, and practices in the State; and
10. Promoting development of uniform State procurement procedures to the extent possible.[[2]](#footnote-2)

What follows is a description of how this diverse range of goals is furthered by specific application of law, regulation, and procurement policy and protocol. It is written with the hope that the information set forth will be useful primarily to Maryland procurement officials, but also to representatives of private sector companies interested in State government contracting. They may include direct employees of firms seeking State work as well as their attorneys and lobbyists. Perhaps the most valuable aspect of this review can be found in the footnotes, as they are intended to draw the reader’s attention to the actual specific source of authority for the various principles summarized below in an orderly and comprehensive fashion. That authority should be relied upon in the conduct of State procurements.

**The Board of Public Works**

Unique in the nation, since adoption of the Maryland Constitution in 1864, all procurement authority in the State is vested in the Board of Public Works (BPW), a three-member body consisting of the Governor, Comptroller, and State Treasurer.[[3]](#footnote-3) Of course, BPW does not have the available time or desire to be troubled with the responsibility of approving every single small requisition or proposal for the expenditure of public revenue, so by statute and regulation, spending authority is delegated by BPW to certain other authorities for certain purposes up to specified spending limitations.

Generally speaking, BPW retains spending authority for all expenditures in excess of $200,000. It exercises this authority by meeting in Annapolis in the Governor’s Press Room on the second floor of the State House every couple of weeks, at which time the State’s Primary Procuring Units (PPUs) present an Agenda for approval by simple majority vote of 2 of the 3 members.[[4]](#footnote-4) Most items on the BPW Agenda are supported unanimously without discussion, but each BPW member is free to request that any given item be removed from the voting consent calendar at which time the member may make any statement or inquiry the member deems appropriate to the issue at hand. As a result, high ranking representatives of each agency in the executive branch of State government attend the meetings scheduled in advance for the entire year, with an Agenda published online for public notification two weeks ahead of the meeting. Ordinarily, a Division Director, Deputy Secretary, or Secretary of a State agency is expected to be present at BPW meetings to respond to inquiries.[[5]](#footnote-5) Those top management officials often appear with additional agency personnel such as program specialists or funding recipients who are available to add any detailed information about a particular recommendation for BPW action. Private sector representatives who wish to testify at the discretion of BPW need to sign up in advance to request that opportunity.

Subject to the directive of the BPW Secretary acting upon BPW directive, the Agenda is broken down into sections presented by each PPU, which include the Department of Natural Resources (DNR), Department of Budget and Management (DBM), University System of Maryland (UM), Department of Information Technology (DoIT), Department of Transportation (DOT), and Department of General Services (DGS). Some PPUs act as a control agency managing the procurement requests made by various other State agencies which are not PPUs; so, to use a recent BPW Agenda as an example, as a part of the DBM portion of the BPW Agenda there may be listed procurements handled and requested directly by DBM, but also other procurements conducted by the Department of Health and Mental Hygiene (DHMH), Department of the Environment, Department of Human Resources (DHR), Department of Education, Department of Juvenile Services (DJS), and Department of Disabilities. Proposals for acquisition of services will generally fall under the aegis of DBM, just as procurement of commodities and certain ordinary labor functions like maintenance or security may fall within the DGS section of the Agenda, and contracts for acquisition of information technology will appear within the DoIT portion of the Agenda. Some of the other PPUs, like DNR, UM, and DOT will ordinarily not have control or authority over procurements conducted by other agencies, and will present only proposals for contract award or other State action directly within their limited jurisdiction.

**The Path Leading to BPW Presentation**

Of course, final BPW authorization of a procurement represents the culmination of a long process that precedes that singular public event, which often carries great anticipation as diverse stakeholders anxiously await approval of a major contract; but ends in a fizzle, or a relief, as BPW approves the Agenda item generally without controversy or discussion. Most of the action surrounding a procurement precedes the public showing that takes place at BPW meetings. As you may imagine, many individuals participate in one role or another in the competition for selection of firms for contract award by the State. So now that this Manual has described the end result of the procurement process, let us go back to the beginning for a discussion of how a procurement is initiated, long before it eventually makes its way to BPW approval.

When a particular governmental program recognizes that a certain need, goal or objective may be best suited to achievement through private sector participation, it determines to initiate a procurement. The first step to facilitate a procurement is to secure certification from the issuing agency that it has allocated funds to pay for the contract resulting from the solicitation.[[6]](#footnote-6) For some procurements, the fund cert may be trivial and as simple and inexpensive as ordering some routine office supplies, but other procurements may be as expensive and complex as completing a massive transition to new sophisticated computer capability and interface, or selection of a Pharmacy Benefits Management (PBM) firm to provide medication to State employees and their families.[[7]](#footnote-7) In this Manual, the methods of accomplishing the smallest, simplest contracts are discussed first.

**Credit Card Purchases**

If a State contract is for an amount less than $5,000, the purchase is facilitated by using a Corporate Purchasing Card (CPC), that is, a standard credit card issued against a State account use of which is authorized to a particular State employee. Those cards are administered by the State Comptroller’s Office. The transaction may be verbal or written, and though all purchases are carefully audited, there is little immediate oversight as the State employee making the purchasing decision is merely “encouraged” to obtain more than one quote before making an acquisition, and is also encouraged to solicit from minority-owned businesses and small businesses.[[8]](#footnote-8) The preferred practice is to solicit at least three (3) competing bids to assure that the State is securing a fair bargain. Record-keeping requirements are slightly more stringent for written as compared to verbal transactions, but both require basic documentation of the name and phone number of the purchaser, date of contract, name and address of the vendor, invoice or receipt, and a brief description of the item or labor purchased.[[9]](#footnote-9) While unstated in the BPW Advisory on CPC use, regulations also require the retention of “[a]ll internal and external correspondence regarding the procurement” as well as memorialization of all bids or offers solicited or received.[[10]](#footnote-10) Purchases of less than $5,000 are also referred to as Category I Small Procurements.

**Small Procurements**

The next classification of State procurements include those that are under $25,000, all of which are classified as “Small Procurements.”[[11]](#footnote-11) Those small procurements that are more than $5,000 but less than $15,000 are also known as Category II Small Procurements, and for those, like Category I Small Procurements, there is no requirement to publicize the solicitation in eMaryland Marketplace (eMM), so there is no public notice requirement, in contrast to solicitations in excess of the $15,000 threshold, which are required to be listed on eMM. The purchasing officer usually enjoys wide discretion in making the purchasing decision for Small Procurements, but is still constrained by alternative rationales of most favorable price or evaluated price, or most advantageous offer of the State. Like Category I Small Procurements, for Category II Small Procurements of between $5,000 and $15,000, the best practice is for the procurement officer affirmatively to solicit from multiple prospective vendors before selecting the successful State contract awardee, and to document those solicitation efforts as part of the procurement record retained for oversight and auditing.

Category III Small Procurements are for those contracts between $15,000 and $25,000. For these, a written description of the solicitation must be posted on eMM for at least three (3) days before the deadline for submission of responses. The best method for private companies to check for State contract opportunities, therefore, is on eMM. Private firms seeking State contracts are wisely counseled to check there often.[[12]](#footnote-12) Access to eMM is free.[[13]](#footnote-13) In order to compete for a State contract, firms must be registered online with the State Department of Assessments and Taxation (SDAT) and certified by the Comptroller’s Office as owing no back taxes.[[14]](#footnote-14) Registration enables firms to list a company profile in order to receive automatic notice of upcoming solicitations in their fields of specialization.[[15]](#footnote-15) By contrast, procurements in excess of $25,000 are not classified as small procurements and are therefore required to be posted in eMM for at least 21 days, instead of only 3.

**Non-Competitive Procurements**

Procuring agencies are required to avail themselves of the State’s Master Contracts for certain commonly acquired goods and services. These include the purchase of office supplies through DGS as well as certain services made available through DBM, such as auditing, interpreter, and travel services. Whenever goods or services are available through a statewide Master Contract, procurement using a mere Purchase Order from a Master Contract is the vehicle of first recourse in lieu of going through a lengthy procurement process. Unique among State agencies, DoIT also maintains IT Master Contracts for dozens of functional areas in which hundreds of pre-cleared private providers are listed as capable and available to provide specified goods or services to the State. Contracting using DoIT’s Master Contract list is usually competitive, however, and will therefore be discussed in a later section of this Manual.

The most common example of a non-competitive procurement is product acquisition from Maryland Correctional Enterprises (MCE), which uses inmate labor to produce or provide for government acquisition of not only license plates but also items such as furniture, signage, printing, shredding and mailing services.[[16]](#footnote-16) About 3,000 incarcerated individuals participate in the program, which serves multiple missions of reducing prison idleness, while training inmates with job skills, in addition to providing items for State government consumption. For goods made available by MCE, State agencies are obliged to purchase from that source rather than going into the private market.

Another non-competitive preferred provider is Blind Industries and Services of Maryland (BISM) which the State is required by statute to use for vending services as well as to procure cleaning products and supplies.[[17]](#footnote-17) In addition, Maryland Works is a program managed by DGS and facilitated through community services providers whereby disabled individuals can work on State contracts suitable for performance by the disabled.[[18]](#footnote-18) Non-competitive negotiated contracts are also permitted for human, social or educational services.[[19]](#footnote-19)

DGS maintains a preferred provider list of vendors who are prequalified with a blanket purchasing order availability on a master contract. Frequently procurements are facilitated using the Advanced Purchasing/Inventory Control System (ADPICS) component of the State’s Financial Management Information System (FMIS), which contains that list preloaded with required information such as tax identification numbers and clearance from the Comptroller’s Office, so those vendors enjoy a natural competitive edge even though procurement officers should still do comparative pricing before entering into a contract even though listed firms may have catalog pricing that has already been approved by DGS.

Finally, also to realize savings by maximizing economies of scale when soliciting bids or proposals, it is possible for the State to “piggyback” its purchases on top of pre-existing contracts entered into by other governmental entities. This arrangement, known as Intergovernmental Cooperative Purchasing, should be utilized only when savings and administrative efficiencies may be realized.[[20]](#footnote-20)

**Sole Source Procurements**

BPW frowns upon sole source procurements which should be avoided whenever possible, but occasionally, only a single source exists for procurement of a needed product or service. The most common example of sole source procurement is seen when the State resorts to the owner of unique software as the only party with knowledge of and access to the source code needed to maintain or modify an existing IT system. Sole source procurements must be authorized by the agency head or designee in writing and posted on eMM within 30 days of contract award.[[21]](#footnote-21)

**Emergency Procurements**

Sometimes unforeseeable events occur which demand immediate response that require a State procurement. In such cases, the law affords broad discretion for prompt action. Specifically, procurement officers “may make an emergency procurement by any method that the procurement officer considers most appropriate to avoid or mitigate serious damage to public health, safety, or welfare.”[[22]](#footnote-22) Provided that the emergency procurement is authorized by the agency head or designee, the only requirements of an emergency procurement are that an attempt is made to “obtain as much competition as possible under the circumstances” and limit the procurement only to “those items, both in type and quantity, necessary to avoid or to mitigate serious damage to public health, safety, or welfare.”[[23]](#footnote-23) The principal check on misuse of the emergency procurement exemption from ordinary rules, beside the limiting language of “public health, safety, or welfare,” is that the procurement must be reported to BPW by a detailed writing justifying the emergency procurement within 45 days of contract award.[[24]](#footnote-24) Failure of an agency to plan ahead in time to complete procurements before necessary goods or services are needed does not constitute an emergency, only grounds for termination of the procurement officer or other agency management personnel who failed in that responsibility. Examples of true emergencies are collapse of a roof, failure of a heating system in the middle of winter, or unanticipated departure of vital personnel leaving a vulnerable population at risk.

**Competitive Procurements**

To acquire goods or services other than those which may be obtained through a blanket purchase order (BPO) or under the specialized programs described above for MCE, BISM, and Maryland Works, statute requires that “all procurement . . . shall be by competitive sealed bids unless one of the following methods specifically is authorized:

1. Competitive sealed proposals under § 13-104 or § 13-105 of this subtitle;
2. Noncompetitive negotiation under § 13-106 of this subtitle;
3. Sole source procurement under § 13-107 of this subtitle;
4. Emergency or expedited procurement under § 13-108 of this subtitle;
5. Small procurement under § 13-109 of this subtitle;
6. An intergovernmental cooperative purchasing agreement under § 13-110 of this subtitle; or
7. Auction bids under § 13-111 of this subtitle.”[[25]](#footnote-25)

As contrasted to competitive sealed *bids*, the same statute further provides that competitive sealed *proposals* is the preferred method of acquiring “human, social, cultural, or educational” services.[[26]](#footnote-26) Sole source and emergency procurements are highly disfavored, so except for small procurements, the most common methods of government contract procurements are an Invitation for Bids (IFB) or a Request for Proposals (RFP). Understanding the differences between the two is fundamental to making a correct determination of how the State is best served when issuing a solicitation.

**Contract Duration and Payment Provisions**

Before detailing the foregoing methods of procurement, it may be useful at this juncture to inject a brief description of a couple of the various types of contracts that may be entered into by the State, just as they may exist in contract clause between private parties. First, the duration of a service contract is established by the terms of the solicitation.[[27]](#footnote-27) Ordinarily large State contracts have an initial term of 4-5 years. It is also quite common for the State to establish an initial term of 3 years, with 2 option years included in pricing. This enables fiscal planning, certainty, and continuity of services while preserving the benefit of periodic competition for contract award. Of course, by mandatory provision, the State may terminate a contract for default in the event of non-performance, and in public procurements the government also enjoys the unique ability unilaterally to terminate a contract for mere convenience of the State, which is to say with or without cause.[[28]](#footnote-28) As a result, private offerors understand that the actual stated contract duration is somewhat illusory, though it is unusual for the State to terminate in advance of the stated end date, unless problems arise with goods or service delivery.

Payment for services rendered for the State may be set on the basis of a fixed price, or a price that fluctuates depending on the volume of goods or services provided. The latter may rely upon a definite or an indefinite quantity. For example, the State may agree to pay a flat fee for a specified service to be rendered in unknown quantity, or it may instead agree to remit $100 per widget ordered and delivered. Or to use another example, pricing might be set for a call center based upon the expectation that 1,000 calls will be handled per week, with the additional contractual payment provision that if call volume exceeds the number anticipated, the vendor may be entitled to additional compensation established as a part of the contract cost for each additional call over 1,000, or every 100 calls over the defined threshold. By building the cost of excess volume into the financial proposal, offerors may be able to calculate and offer pricing that does not require the inclusion of extra sums that might otherwise be incorporated into pricing based upon the risk of added volume. More creative pricing options are also available, such as cost incentive contracts, whereby a vendor may be rewarded for achieving a certain goal or penalized for failing to achieve an intended result. Other State needs are best served by a form of cost-reimbursement contract, which is especially useful if there is significant uncertainty over the quantity, cost or volume of work obligations. Forms of contract pricing and guidelines regarding their allowance are specified by statute and regulation.[[29]](#footnote-29)

For large contracts, performance bonds, insurance and liquidated damages provisions are some of the tools used for contract management to establish a means of assuring performance, but in writing a solicitation procurement officials should also remember that the cost of each requirement is built into the price that is proposed to the State.[[30]](#footnote-30) With that in mind, we will turn next to a discussion of some of the methods by which procurements may be conducted.

**Invitation for Bids**

When the State promulgates an IFB, also known as a Request for Quotation, the procuring governmental unit has virtually no discretion in the selection of the successful vendor after bids are submitted. Unless the solicitation is cancelled, contract award is required to be offered to the responsive and responsible vendor that offers the lowest price. As a result, the Minimum Qualifications section of an IFB is extremely important. Assuming that the business that responds to an IFB meets the bare minimum of the requisite elements set forth in the IFB, the low bidder wins. Evaluation of offers received in response to an IFB consists merely of a public recitation of the amounts of prices offered, with the lowest price determining the successful vendor.[[31]](#footnote-31) The IFB is indeed the preferred method of solicitation according to statute because it assures that the State is getting the lowest price available for the goods or services specified in the IFB.

Ordinarily an IFB will consist of five sections: (1) General Information about the solicitation; (2) a statement of Minimum Qualifications for a prospective offeror to submit a bid price; (3) Scope of Work; (4) a description of Bid Format; and (5) Attachments. Various procuring agencies make readily available online procurement templates which are pre-approved and already include required items like attachments and mandatory provisions such as the State’s right of termination for convenience, one of a total of 25 other mandatory provisions.[[32]](#footnote-32)

A less commonly used but available variation of the standard IFB is the multi-step IFB, by which the procurement is divided into two phases. A multi-step IFB is supposed to be used only when it is determined that less discretionary flexibility is needed than when an RFP is necessary, but when it is also difficult or impossible to draft specifications alone that would result in correct determination of the best offer based solely on cost considerations. In these unusual cases, the pool of offerors may be pre-approved based upon samples or technical submissions, after which pricing is solicited in the second step of the procurement only from those firms that survive the first round of review, and contract opportunity is extended to the lowest priced offeror previously deemed to be qualified to submit a bid.[[33]](#footnote-33)

In most instances a Contract Fulfillment Team (CFT) should be appointed to manage the procurement from initial concept through to contract management and termination. The CFT may include primary and secondary stakeholders and will usually include a contract officer specializing in the requirements of a lawful procurement, one or more contract managers who generally serve in the capacity of program specialists, sometimes referred to as procurement coordinators, including the representatives who will likely manage the contract resulting from the procurement, as well as non-voting experts and possibly also a representative from the Office of the Attorney General and the agency’s Minority Business Enterprise (MBE) Liaison Officer. The first function to be served by the CFT will be to determine and select the correct form of the procurement solicitation, followed by the nuts and bolts of drafting the language to be set forth in the key sections of the solicitation document, such as Minimum Qualifications and Scope of Work.

Prior to determination of the low bid, the procurement officer is permitted but not required to extend a bid preference to Maryland firms competing against a company based in a State that affords to its in-State businesses a selection preference over out-of-state firms competing for that State’s contracts. If imposed, that preference “shall be identical to the preference that the other state…gives to its residents.”[[34]](#footnote-34)

The State enjoys wide latitude to reject all bids or proposals and cancel a solicitation whenever that action is “in the State’s best interest” providing only that the agency head or designee of the issuing unit of State government approves of the cancellation.[[35]](#footnote-35) This right is ordinarily specifically referenced in the IFB or RFP.

A bid or proposal submitted after the deadline for submission as specified in the solicitation may not be considered.[[36]](#footnote-36) This requirement is strictly construed. Hence it has been determined that a proposal produced merely a few minutes after the bid submission due date and time, through no fault of the proposer, must be rejected out of hand.[[37]](#footnote-37) Submission of bids or proposal are permitted only if allowed by the terms of the solicitation.[[38]](#footnote-38)

**Request for Proposals**

Contrast the IFB to the RFP. An RFP will include all five sections set forth above as the elements of an IFB, but in addition will include a section describing how proposals will be evaluated.

When a solicitation is conducted using an RFP, the State retains enormous discretion to evaluate the quality of competing proposals in an effort to determine not just the lowest cost, but more subjectively, which proposal offers the best value to the State.[[39]](#footnote-39) Price is only one portion of the overall evaluation of responses to an RFP. The State may choose the lowest priced proposal, but is also free to select a higher priced proposal providing that the extra cost is justified by the superior value offered by the goods or services proposed.[[40]](#footnote-40) The total RFP evaluation therefore is broken into two components: financial and technical. These two components of proposal evaluation must be conducted separate from one another.[[41]](#footnote-41) Ordinarily, the financial and technical components of proposal evaluation are given equal weight, though it is not highly unusual for the government to specify that the technical evaluation is weighted heavier than the financial for some procurements, particularly those which allow a complex range of solutions to the Scope of Work set forth in the RFP, with the resulting likelihood that competing vendors may offer vastly varying degrees of competency and experience as well as disparate technical approaches and capabilities offered to the State in response to the RFP. Whether weighted equally or disparately, the technical and financial components of proposals must evaluated in accordance with the weight specified in the solicitation.[[42]](#footnote-42)

**Request for Information (RFI)**

It is not unusual for private sector resources to be more familiar with a range of newly available potential solutions to a State need than are the programs attempting to address that need by public procurement action. The RFI is available for the State to gain familiarity with currently available products and services that may be useful for the State to know about in order to initiate discussion with the vendor community and ultimately develop a formal solicitation. The RFI is not a procurement and it is important that no financial information be permitted to be set forth in a response to an RFI. There is no guarantee that information or insight derived by responses to an RFI will actually result in a subsequent solicitation, and no expectation is intended by the State to indicate to vendors what the terms and conditions of a subsequent solicitation might include. It is just a learning instrument in advance of the initiation of a State procurement. The issuance of an RFI may be especially useful to identifying sophisticated IT capabilities that State procurement authorities should know about before determining the best approach to solve a problem.

**Developing the Terms of a Competitive Procurement**

The most efficient way of going about writing an IFB or RFP is to start with a template of the appropriate procurement instrument. Initiated at DHMH in slightly specialized fashion, these are also available at the procurement websites for control agencies, particularly DBM. Because they have been pre-approved by the OAG and DBM, they are certain to include required boilerplate which constitutes much of a solicitation document, such as mandatory provisions.

As intimated above, the Section 2 on Minimum Qualifications is the heart of an IFB, but not nearly as important in an RFP because evaluators are free to reject any proposer which does not offer sufficient competency and experience to perform a job satisfactorily. The Min Quals section simply reduces the pool of eligible offerors. By contrast, Section 5 on Evaluation Criteria is central to an RFP, because it defines the factors that must be considered when proposals are evaluated. It is a violation of regulation for the Evaluation Committee to consider anything that is not specified in the RFP so that all offerors are notified ahead of time precisely how their proposal will be judged.[[43]](#footnote-43)

Of course, the guts of both an RFP and IFB is Section 3 on Scope of Work. Here it is vital to set forth accurately and completely what the successful vendor will be required to deliver to the State as the result of the procurement. The vendor will be required to provide all goods and services in the fashion identified, and may not be required to do anything that is not specified in the Scope of Work section, except as an addition or change order to the contract for which additional compensation may be due.

**Evaluation of Offers**

Regardless of whether the solicitation method is by IFB or RFP, timeliness of submission of an offer is of utmost importance. A bid or proposal that is submitted after the established cutoff time and date is not allowed to be accepted or considered by the State for contract award, regardless of the reason for the delayed response, except in the event that the State itself is responsible for the delay.[[44]](#footnote-44) As set forth above, evaluation of responses to an IFB is quite simple and straightforward. Low price prevails, providing only that the bid comes from a responsible bidder and the bid itself is fully responsive to the solicitation. The difference between responsibility and responsiveness will be discussed in further detail below.

By comparison, evaluations of proposals submitted in response to an RFP may be quite laborious and time-consuming. First, each response to an RFP must be inspected to assure that it is transmitted in timely fashion and includes all requisite submissions such as proof of compliance with MBE participation assurances, also known as Attachment D under current law. It is not uncommon for a proposal to be rejected out of hand before it is even subjected to further evaluation, if it fails to include the required MBE compliance forms and also fails to include a request for waiver of MBE goals, for example. Such a proposal is deemed automatically to be non-responsive and is not further reviewed. Treatment of preferred providers such MBEs, small businesses, and veteran-owned small businesses (VSBE) are also discussed in further detail below.

Assuming that a proposal appears to be complete and responsive following initial inspection, it is initially presumptively classified as “reasonably susceptible of being selected for award” and the entire submission is provided to each of the members of an Evaluation Committee.[[45]](#footnote-45) Ordinarily the Evaluation Committee consists of at least three individuals, often more. It is useful for the members of the Evaluation Committee not only to have specialized knowledge and expertise in the subject matter of the procurement, but also, if possible, varying perspectives on the services being acquired. Often the members of the Evaluation Committee are the same program representatives who participated in drafting the specifications set forth in the RFP, so they will be intimately familiar not only with the solicitation document but also with the particular needs of the State agency which the procurement is designed to fulfill. Of course, during the course of substantive evaluation it is possible that a proposal may be reclassified as not reasonably susceptible of being selected for award because it lacks a mandatory element set forth in the scope of work or minimum qualifications, for example.

During the technical evaluation phase of proposal evaluation, pricing information is kept sealed, confidential, and separately stored, so that the Evaluation Committee will make its technical evaluation based solely upon the technical evaluation factors set forth in the RFP, without knowledge of proposed price at this earlier stage of proposal evaluation. Responses to an RFP are required to be made in two separate sealed envelopes to facilitate the required independent review of technical vs. financial elements without influence upon the technical evaluation by premature knowledge of the pricing set forth in the financial proposal.

The technical evaluation is required to be conducted in strict accordance with the technical evaluation factors prescribed in the RFP. As earlier stated, it is unlawful for the Evaluation Committee to consider any technical factor not expressly specified in the RFP.[[46]](#footnote-46) It is also unlawful for the Evaluation Committee to fail to consider any technical factor that is included in the RFP.[[47]](#footnote-47) A frequent basis for protest of a procurement recommendation determination is that the evaluation of the technical factors by the Evaluation Committee was flawed in these respects, either by omission or commission. For this reason, an evaluation tool or checklist should be developed and provided to each member of the Evaluation Committee, by which every technical factor required to be evaluated is spelled out in language identical to that specified in the RFP, and no factor is included in the evaluation tool that is not specified expressly by the terms of the RFP. Because technical factors are generally given varying weight, depending on their importance to the success of the procurement outcome, they are ordinarily listed in the RFP in order of the weight assigned, from greatest to lowest. Economic impact to the State of Maryland does not need to be but is almost always included as one of the technical evaluation factors and generally afforded less weight than other factors.[[48]](#footnote-48)

There are multiple schools of thought on how to conduct the technical evaluation. “Numerical rating systems may be used but are not required.”[[49]](#footnote-49) So, for example, the Evaluation Committee may be instructed to assign a total of 100 points to technical factors: 40 points for the most important technical factor, 30 points for the next most important, 20 points for the third heaviest weighted factor, and 10 points for Economic Impact to Maryland as the lowest weighted factor. It is the view of this author that a numerical rating system may give rise to an element of precision that may otherwise be lacking. However, it is the considered opinion of other highly experienced procurement experts that, because the evaluation itself is entirely subjective, assigning a certain numerical score to a technical evaluation is misleading because it pretends to ascribe certainty to an opinion that is inherently and necessarily based upon a judgmental evaluation that is not quantifiable but by nature is instead imprecise.[[50]](#footnote-50)

Some Evaluation Committees may prefer to assign a grading score of “A” through “F” to each of the technical evaluation factors, which is very much akin and easily convertible to a numerical rating. More common in contemporary procurements is the use of adjectival ratings such as “excellent,” “very good,” “good,” and “satisfactory.” As specified on the evaluation tool, other adjectives can be readily substituted for these if uniform language is desired in order for each member of an Evaluation Committee to render an independently determined rating judgment, or it is possible to have no specified numbers, letters, or adjectives, and simply allow the members of the Evaluation Committee to make their own notes and conclusions regarding the desirability of a given proposal. The most radical approach in this regard may be the approach highly preferred by some of the most experienced procurement officers, whose experience defending a controversial award recommendation may cause them to be concerned that a certain numerical, letter, or adjectival rating is more difficult to defend than simply ranking proposals in order, without any description at all about the disparity between proposals or basis of ranking one higher than another. In those cases, technical proposals are ranked like financial proposals, merely as first, second, third, etc.

It is only after the Evaluation Committee has met and made final determination of technical evaluation factors that financial proposals are then opened and compared with one another and ranked in order of lowest price to highest. The lowest price, of course, is ranked first, followed by the next lowest and so on. In the event of the happy coincidence of the highest ranked technical proposal being also ranked first in financial consideration, the evaluation is over. That proposal is obviously the top offer most advantageous to the State. But in the more typical case of the lower ranked technical proposal being more economical, the Evaluation Committee must then commence a third phase of proposal evaluation following the technical and financial evaluations, namely, a cost/benefit analysis.[[51]](#footnote-51) In this fashion, the Evaluation Committee is tasked with the duty of deciding whether the price differential is justified by the superior technical product. If the higher ranked technical proposal is determined to be worth the extra cost, it is ranked overall as the top proposal, but in the event that the trade-off analysis concludes that significant savings to the State is preferable to only slightly higher quality of technical proposal, for example, then the lower cost and lower technical rated proposal is required to be recommended for award.

**Debriefing**

At the conclusion of an agency’s evaluation of an RFP, unsuccessful offerors may request a debriefing for the purpose of gaining insight into the basis of the procurement determination.[[52]](#footnote-52) The actual usefulness of the debriefing may be somewhat limited, however, because the debriefing is prohibited from including any information at all about competing proposals.[[53]](#footnote-53) Debriefing is nevertheless commonplace and may be sought by the offeror in order to learn how future proposals might be improved, and also to discover potential errors committed by the State which may give rise to a bid protest prior to contract award. It is recommended by this author that the notification to offerors of the selection or rejection of their proposal include a table showing the rank of each proposal for technical, financial, and overall evaluation. In that fashion, all offerors are placed on specific notice of how their proposal fared in comparison to the other proposals, something that is not permitted in the debriefing.[[54]](#footnote-54)

**Responsible vs. Responsive**

To return to an issue mentioned only in passing above, two of the predicates to a legitimate recommendation for award are that the proposal come from a responsible contractor, and that the proposal itself be responsive to the requirements set forth in the RFP. These are totally different concepts. “’Responsible’ means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance.”[[55]](#footnote-55) So a contractor that is suspended or debarred from engaging in government contracting is not a responsible offeror.[[56]](#footnote-56) But lots of business entities that are eligible to compete for state contracts may also be eliminated as non-responsible, such as a firm which offers to perform a huge and expensive series of services but does not possess the infrastructure or borrowing capability to perform as promised.[[57]](#footnote-57)

By contrast, “’Responsive’ means a bid submitted in response to an invitation for bids that conforms in all material respects to the requirements contained in the invitation for bids.”[[58]](#footnote-58) A bid is deemed nonresponsive if it is incomplete or fails to offer performance of all required elements of work tasks or commodity specifications, for example, or in the event that a material attachment required to be included with the proposal is not actually attached. Often times in the face of a defect potentially excluding consideration of an offer because of non-responsiveness, the determination of whether the proposal is responsive turns on whether the defect constitutes a “minor irregularity” which can be waived, or in the alternative, the bidder may be allowed the opportunity to cure a defect which is not material.[[59]](#footnote-59) If an error and the needed correction are clearly evident on the face of the bid document, the correction must be made and the bid may not be withdrawn.[[60]](#footnote-60)

**Promotion of Socio-Economic Objectives through State Procurement**

Besides stretching the value of a dollar when making procurement decisions, the State also assumes ancillary obligations to the public welfare in the nature of fair-dealing, inclusiveness in government sponsored economic opportunity, and promotion of business development and growth. The best known category in this aspect of State procurement policy is the MBE program, but there are also programs supporting small businesses and others.[[61]](#footnote-61)

**Small Business Reserve (SBR)**

In part because it is generally recognized that economies of scale may in some cases permit large firms to offer lower pricing than smaller firms, Maryland attempts to promote small businesses by setting up segregated State contracting opportunities which are available only to small businesses. The SBR program is unlike those which promote MBEs and VSBEs, in that certain designated State procurements are set aside so that only small businesses are eligible to compete in response to an SBR designated solicitation.[[62]](#footnote-62) In such a protected environment, small businesses do not have to compete against bigger well-established firms. The executive and legislative branches of government have endorsed this strategy in order to support small business development, with the goal that small businesses should participate as the State’s prime contractor in at least 10% of the total dollar value of all State procurement activity.[[63]](#footnote-63) Besides the SBR set-aside program, another method of promoting small business development in the State is to afford in IFBs a preference of up to 5% for small businesses, 7% for VSBEs, and up to 8% for disabled veteran owned small businesses.[[64]](#footnote-64) Generally speaking, to qualify as a small business, an entity may not employ more than 100 employees in a manufacturing operation, 50 employees in a wholesale company, or 25 employees in a retail business. In addition, another eligibility threshold is also established as gross sales ceilings which range from $2-10 million over the course of the prior 3 fiscal years, depending on the type of business. Annual registration as a small business eligible to compete in the SBR program is handled by GOMA.[[65]](#footnote-65) State agency protocol may vary on this point, but it is recommended that all procurements be initially deemed eligible for classification as SBR, and then exempted only if necessary or desirable to assure successful provision of goods or performance of the services desired because of the existence of an inadequate number of SBR competitors. It is also recommended that procurement officers consider the usefulness of dividing certain contracts into regional rather than statewide service delivery in order to accommodate the performance limitations of small businesses.

**MBE Program**

Since legislative enactment of the original MBE program in 1978, the State has endorsed and required that procurements be conducted in a manner that opens competition to all, regardless of race or gender, and promotes fair participation in state contract activity by businesses registered with the Maryland Department of Transportation (MDOT) as having majority ownership by a female or an individual having one or more specified ethnic backgrounds. In 1989 the Supreme Court of the United States determined that a set-aside program like the SBR program described above is unconstitutional if used to advantage MBEs because preferences based on race or gender violate the Equal Protection Clause of the U.S. Constitution.[[66]](#footnote-66) As a result of that decision, affording a preference to an MBE has been required to be facilitated not through a set-aside, but instead by establishing an MBE participation goal to be accomplished by imposing upon prime contractors the obligation to hire MBE subcontractors to perform work for which a specified percentage portion of the responsibilities set forth in the Scope of Work in an IFB or RFP is to be paid by the prime contractor to an MBE subcontractor from the funds paid by the State to the prime contractor. [[67]](#footnote-67)

The MBE program has evolved considerably over the decades and at the present time includes a goal of achieving 29% of the total dollar value of the procurements of each State agency to be awarded to MBEs.[[68]](#footnote-68) To pass constitutional muster, race-neutral measures are required to be the avenue of first recourse to accomplish that goal,[[69]](#footnote-69) and the entire program must be periodically justified by legislative findings supported by a survey or study demonstrating the existence of lingering effects of past discrimination sufficient to present current obstacles to equal participation to those deemed eligible for preferred status as an MBE.[[70]](#footnote-70)

A Procurement Review Group (PRG) is designated for large procurements to determine the appropriate percentage amount of MBE goal and sub-goals, if any, to be specified in form Attachment D. This figure is determined on the basis of MBE availability to perform tasks identified as being potential areas of subcontract opportunity. That package of attachments also includes a form by which an offeror may request waiver of the established MBE participation goal, but the entity requesting a waiver carries a high burden of proof even when the obligation of finding and using MBEs may be onerous.[[71]](#footnote-71) The documentation required to show good faith effort to discover and hire MBEs is extensive. Even a minor defect in a prime contractor’s completion of Attachment D may render an offer nonresponsive, though recently enacted legislation affords a slight window of opportunity for a prime contractor who offers a defective MBE proposal to correct an error at the discretion of the procuring agency.[[72]](#footnote-72) That provision is referred to as the “72-hour Rule.”

**VSBE Program**

As indicated above, another class of businesses that enjoy preferred State contracting status are small businesses that are owned by veterans, for which a new program exists to provide treatment quite like that given to MBEs, except that the State’s VSBE goal is only 1%.[[73]](#footnote-73) In addition, as earlier indicated, VSBEs may be given up to 7% preference in IFBs, or up to 8% for disabled veteran owned VSBEs.[[74]](#footnote-74) Rather than facilitating registration of VSBEs through the MDOT, as is the case for MBEs, or GOMA, as is the case for SBR, VSBE status is determined and certified by the U.S. Department of Veterans Affairs.[[75]](#footnote-75)

**Hiring Agreements**

A more unusual State contracting program is also intended to provide work opportunities for certain individuals based on their status and is accomplished through Hiring Agreements administered by the Welfare Reform Program of the Department of Human Resources (DHR).[[76]](#footnote-76) Under this arrangement, a private entity in need of employees may secure preferred status in State procurement by agreeing to train and hire persons receiving State assistance. Especially when work tasks are identified that may be suitable to persons receiving State assistance, it is important for procurement specialists to give consideration to this underutilized program.

**DoIT**

Also in a unique category of State procurement processes is DoIT’s Mater Contracts, by which procurement officers identify a functional area of IT need which is ordinarily subdivided by DoIT into labor categories. Using the list of eligible providers identified by DoIT for the required item, a mini-procurement is conducted among those providers whereby the State advertises a solicitation for at least 21 days, during which time the specialized business entities listed submit bids or offers to the State. These may consist of Consulting and Technical Services (CATS), Commercial Off-the-Shelf Software (COTS), or any one of numerous other products and services classified in DoIT’s Master Contracts. The procuring officer can establish a set of specifications and make award to the lowest bidder who agrees to satisfy the specifications, or by contrast, conduct a procurement which evaluates technical capability as well as pricing in order to select the vendor that best serves the State’s needs. Often, a Request for Resume (RFR) is used to satisfy an immediate temporary need and during the course of performance of the RFR, the procuring agency may solicit for longer term support using a Task Order RFP (TORFP) or Purchase Order RFP (PORFP). The CATS+TORFP is a common method of securing labor services in the IT field, while the PORFP is generally used for one-time product acquisition for items such as computer software or hardware. For IT contracts anticipated to be in excess of $100,000, all qualified vendors listed in the Master Contract list for a particular work category must be invited to submit a proposal, but for those contracts under $100,000, as few as six of the listed vendors may be solicited.[[77]](#footnote-77)

**Bid Protests**

Whenever there is more than one offer in response to a State solicitation, it is impossible for the procurement officer to please all parties. Whatever party is not selected for contract award may have a grievance with the process by which recommendation for award was conducted. Any party that is aggrieved by a procurement determination has the right to request review and reconsideration of a procurement recommendation by filing a bid protest within seven (7) days of the date that the basis of the protest was known or should have been known.[[78]](#footnote-78) That short deadline generally runs from the date of receipt of notification of non-award. Such a bid protest must be lodged first by notice to the agency that is conducting the procurement. Exhaustion of administrative remedy is a precondition of judicial review, and that includes bid protests transmitted to the procuring agency as well as appeals filed later with the Maryland State Board of Contract Appeals (MSBCA).[[79]](#footnote-79)

An important principle of the bid protest process is that, “A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals.”[[80]](#footnote-80) The reason for this limitation is self-evident. If the State is apprised of a defect in a solicitation before the deadline for submission of offers, it has the time and opportunity to make a correction by amending the solicitation. After the deadline for proposal submission, however, that opportunity no longer exists. So offerors are bound by the terms of specifications set forth in the RFP even if they are defective, provided only that the defect in the RFP afforded constructive notice to prospective proposers of the basis of a complaint.[[81]](#footnote-81)

In response to a bid protest, the agency conducting the procurement must grant or deny the protest and in the ordinary event of a denial, the aggrieved party then has ten (10) days to file an appeal with MSBCA.[[82]](#footnote-82) Also under the principle of exhaustion of administrative remedy prior to seeking judicial relief, appeal first to MSBCA of a bid protest denial is a necessary pre-requisite to seeking judicial remedy of an alleged error in the procurement process.

**The Maryland State Board of Contract Appeals**

MSBCA is an independent quasi-judicial body located in the executive branch of State government and consisting of three (3) members sitting *en banc* to resolve all disputes arising from State procurement activity.[[83]](#footnote-83) MSBCA proceedings are conducted on the record, with sworn witnesses and introduction of exhibits at evidentiary hearings similar to proceedings conducted in an ordinary court but conducted instead pursuant to the State Administrative Procedures Act (APA).[[84]](#footnote-84) Corporations are required to be represented by a Maryland attorney and the Office of the Attorney General appears on behalf of the State, usually through the AG’s Contract Litigation Unit. Generally two (2) private parties will enter an appearance in each bid protest proceeding, one being the entity that initiated the appeal, contending that it should have been recommended for contract award, referred to as the appellant, and the other being the interested party, namely, the competitor who was recommended for award and stands at risk of losing that recommendation in the event of an unfavorable ruling.

Only a party with standing is permitted to pursue an appeal.[[85]](#footnote-85) In order to have standing, a party must be aggrieved by being in line for prospective contract award. An appeal of the State’s determination to deny a bid protest may only be filed with MSBCA within ten (10) days of the denial.[[86]](#footnote-86) Ordinarily, the procuring State agency enjoys considerable discretion to select the preferred proposal submitted in response to an RFP, because it is that agency and not MSBCA that will have to live with the selected contractor after award and therefore MSBCA does not substitute its judgment for that of the procuring agency.[[87]](#footnote-87)

Since its inception in 1978, a body of case law has arisen from MSBCA opinions, most of which can be found online at the MSBCA website.[[88]](#footnote-88) Frequently persons seeking guidance on the application of procurement law or COMAR Title 21 can find clarification and elaboration of Maryland statute and regulations in those opinions.

**Transparency in Procurement**

The right of public inspection of governmental operations is set forth in Maryland’s Public Information Act (PIA),[[89]](#footnote-89) which is modeled after the federal Freedom of Information Act (FOIA).[[90]](#footnote-90) Public records are presumed to be open to inspection, but there are innumerable exceptions to that policy, and procurement is one of them. Solicitations of course are publicized on eMM and may be sent directly to any business that may be interested in securing a contract with the State. But it is important to the procurement process that the State is free and unfettered to examine the offers that are submitted in response to a solicitation, without the necessity of disclosing confidential proprietary information held by private companies or the content of selection discussions in the nature of internal executive branch deliberations over purchasing options.

Notwithstanding a PIA request, the custodian of procurement documents is required to deny inspection of a public record “if (1) by law, the public record is privileged or confidential; or (2) the inspection would be contrary to (i) a State statute.”[[91]](#footnote-91) Pre-award disclosure of the contents of a proposal to any person other than someone responsible for evaluating or reviewing the proposal is specifically prohibited.[[92]](#footnote-92) Another provision of Maryland’s PIA prevents disclosure of confidential commercial or financial information.[[93]](#footnote-93) Statute and regulation permit the denial of the advisory or deliberative records of an evaluator of a proposal if the records would not be available by law to a private party in litigation with the Department.[[94]](#footnote-94) In accordance with past practice, after a bid protest appeal is filed with MSBCA, eventually evaluator’s notes will be compelled to be released to a party to the litigation who requests them, but they will first be redacted to conceal the identity of individual evaluators. Anonymity is afforded to members of an evaluation committees in order to protect the ability of evaluators to communicate freely and honestly during the course of proposal evaluation and also to encourage State employees to be willing to serve on evaluation committees.

**Conclusion**

As stated at the outset of this Manual, readers should rely upon actual statute and COMAR regulation in the implementation of proper procurement practices. The utility of this Manual is primarily based upon the citations that are attached to the brief narratives summarizing some of the laws and precedents governing state procurement in Maryland.

1. GOMA Annual Report FY2015, pg. 8. [↑](#footnote-ref-1)
2. State Finance & Procurement Article of the Annotated Code of Maryland (SF&P) § 11-201. [↑](#footnote-ref-2)
3. Maryland Constitution, Article XII; SF&P § 12-101. [↑](#footnote-ref-3)
4. SF&P § 12-107. [↑](#footnote-ref-4)
5. BPW Protocol for Presenters, effective 1/5/2016. [↑](#footnote-ref-5)
6. COMAR 21.03.03.01. [↑](#footnote-ref-6)
7. Appeal of Catalyst, Rx.; MSBCA Nos. 2759, 2762, 2768, 2780 and 2784 (2012). [↑](#footnote-ref-7)
8. BPW Advisory 1998-1. [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. COMAR 21.05.01.07. [↑](#footnote-ref-10)
11. SF&P § 13-109. [↑](#footnote-ref-11)
12. Website: www.eMaryland.buyspeed.com [↑](#footnote-ref-12)
13. SF&P § 13-201.1. [↑](#footnote-ref-13)
14. SF&P § 13-222; Comptroller’s website: www.marylandtaxes.com. [↑](#footnote-ref-14)
15. SF&P § 13-102.1. [↑](#footnote-ref-15)
16. COMAR 21.11.05. [↑](#footnote-ref-16)
17. *Id.,* SF&P §§ 14-103, 106, 107. [↑](#footnote-ref-17)
18. SF&P § 14-108. [↑](#footnote-ref-18)
19. SF&P § 13-106. [↑](#footnote-ref-19)
20. SF&P § 13-110; COMAR 21.05.09. [↑](#footnote-ref-20)
21. SF&P § 13-107; COMAR 21.05.05. [↑](#footnote-ref-21)
22. SF&P § 13-108(a); COMAR 21.05.06; Appeal of Trinity Services Group, Inc., MSBCA Nos. 2917, 2931 & 2935 (2015). [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. SF&P § 13-108(a)(2)(iii); COMAR 21.05.06.02D. [↑](#footnote-ref-24)
25. SF&P § 13-102(a). [↑](#footnote-ref-25)
26. SF&P § 13-102(b). [↑](#footnote-ref-26)
27. Multi-year contracts discussed in SF&P § 13-217. [↑](#footnote-ref-27)
28. SF&P § 13-218; COMAR 21.07.03.14; COMAR 20.07.03.15. [↑](#footnote-ref-28)
29. SF&P § 13-213 *et seq*.; COMAR 21.06.03. [↑](#footnote-ref-29)
30. Performance bonds discussed in SF&P 13-216. [↑](#footnote-ref-30)
31. SF&P § 13-103(d). [↑](#footnote-ref-31)
32. COMAR 21.07.01. [↑](#footnote-ref-32)
33. COMAR 21.05.02.17. [↑](#footnote-ref-33)
34. COMAR 21.05.01.04; Appeal of Catalyst, Rx, MSBCA Nos. 2759, 2762, 2768, 2780 & 2784 (2011). [↑](#footnote-ref-34)
35. COMAR 21.06.02.02(C)(1); SF&P 13-206; Appeal of Brawner Builders, Inc., MSBCA Nos. 2770 & 2771 (2011); Appeal of STG Internat’l, Inc., MSBCA 2755 (2011); Appeal of American Infrastructeure-MD, Inc. MSBCA No. 2598 (2008); Appeal of Concrete General, Inc., MSBCA No. 2587 (2008). [↑](#footnote-ref-35)
36. COMAR 21.05.02.10. [↑](#footnote-ref-36)
37. Appeal of Mumsey’s Residential Care, Inc. (2010). [↑](#footnote-ref-37)
38. COMAR 21.03.05.02, *et seq*.; Appeal of Rustler Constr., Inc., MSBCA No. 2638 (2009). [↑](#footnote-ref-38)
39. SF&P § 13-104. [↑](#footnote-ref-39)
40. Appeal of L-1 Secure Credentialing, MSBCA No. 2793 (2012). [↑](#footnote-ref-40)
41. COMAR 21.05.03.03A(2). [↑](#footnote-ref-41)
42. Appeal of PSI Svcs., LLC, MSBCA No. 2601 (2008). [↑](#footnote-ref-42)
43. Appeal of Active Network, Inc., MSBCA No. 2781 (2012). [↑](#footnote-ref-43)
44. COMAR 21.05.02.10B [↑](#footnote-ref-44)
45. COMAR 21.05.03.03B(1). [↑](#footnote-ref-45)
46. COMAR 21.05.03.03A(5). [↑](#footnote-ref-46)
47. COMAR 21.05.03.03A(1). [↑](#footnote-ref-47)
48. COMAR 21.05.03.03(A)(3)(b). [↑](#footnote-ref-48)
49. COMAR 21.05.03.03(A)(4). [↑](#footnote-ref-49)
50. See May 22, 1991 Memorandum to Secretary of Budget and Fiscal Planning from Assistant Attorney General William A. Kahn. [↑](#footnote-ref-50)
51. Appeal of Daycon Products Co., Inc., MSBCA No. 2919 (2015); Appeal of Shirley Contracting Co., MSBCA No. 2932 (2015); L-1 Secure Credentialing*, op cit.* [↑](#footnote-ref-51)
52. COMAR 21.05.03.06A. [↑](#footnote-ref-52)
53. COMAR 21.05.03.06B. [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. COMAR 21.01.02.01B(77); Appeal of Electronic Financial Svcs., Inc., MSBCA No. 2577 (2007). [↑](#footnote-ref-55)
56. COMAR 21.08. [↑](#footnote-ref-56)
57. Appeal of Kinsail Corp., MSBCA No. 2697 (2010). [↑](#footnote-ref-57)
58. COMAR 21.01.02.01B(78); appeal of Concrete General, Inc., MSBCA No. 2918 (2015); Appeal of Baltimore Pile Driving & Marine Const., Inc., MSBCA No. 2549 (2006); Appeal of David A. Bramble, Inc., MSBCA No. 2550 (2006). [↑](#footnote-ref-58)
59. COMAR 21.06.02.04; Appeal of Southern Improvement Co., Inc., MSBCA No. 2904 (2015); Appeal of H. D. Myles, Inc., MSBCA Nos. 2883 & 2888 (2014). [↑](#footnote-ref-59)
60. COMAR 21.05.02.12C(1); Appeal of Pessoa Construction Co., MSBCA No. 2652 (2009); Appeal of Sustainable Svcs Corp., MSBCA No. 2654 (2009). [↑](#footnote-ref-60)
61. COMAR 21.11. [↑](#footnote-ref-61)
62. COMAR 21.11.01.06. [↑](#footnote-ref-62)
63. SF&P § 14-502; *Id.* [↑](#footnote-ref-63)
64. SF&P § 14-206; COMAR 21.11.01.05B(2)(b). [↑](#footnote-ref-64)
65. Website: goma.maryland.gov/Pages/SBR-Registration.aspx [↑](#footnote-ref-65)
66. *City of Richmond v. Croson*, 448 U.S. 469 (1989). [↑](#footnote-ref-66)
67. SF&P § 13-301 *et seq*.; COMAR 21.11.03. [↑](#footnote-ref-67)
68. COMAR 21.11.03.01C. [↑](#footnote-ref-68)
69. COMAR 21.11.03.01D, 21.11.03.07. [↑](#footnote-ref-69)
70. SF&P § 14-301.1. [↑](#footnote-ref-70)
71. Appeal of Concrete Protection & Restoration, Inc., MSBCA No. 2886 (2014); Appeal of Policy Studies, Inc., MSBCA No. 2806 (2012). [↑](#footnote-ref-71)
72. SF&P § 14-302. [↑](#footnote-ref-72)
73. COMAR 21.11.13.01A. [↑](#footnote-ref-73)
74. SF&P § 14-601 *et seq.;* COMAR 21.11.01.05B(2)(b). [↑](#footnote-ref-74)
75. COMAR 21.11.13.02B; Website: va.gov/osdbu [↑](#footnote-ref-75)
76. SF&P § 13-224; Human Services Article Sec. 5-304. [↑](#footnote-ref-76)
77. SF&P § 13-402(d). [↑](#footnote-ref-77)
78. COMAR 21.10.02.03B; SF&P § 15-217; Appeal of Bond Water Technologies, Inc., MSBCA No. 2952 (2015); Appeal of Sodexo USA, LLC, MSBCA No. 2895 (2014); Appeal of Advanced Fire Protection Systems, LLC, MSBCA No. 2868 (2014); Appeal of Abacus Corp., MSBCA No. 2712 (2010); Appeal of Pessoa Construction Co., Inc. MSBCA No. 2656 (2009). [↑](#footnote-ref-78)
79. COMAR 21.10.01. [↑](#footnote-ref-79)
80. COMAR 21.10.02.03; Appeal of Atlas Painting & Sheeting Corp., MSBCA No. 2897 (2014). [↑](#footnote-ref-80)
81. Appeal of Pessoa Construction Co., Inc., MSBCA No. 2652 (2009); Appeal of Adler Svcs. Co., Inc., MSBCA No. 2114 (2000); Appeal of Harbor Construction, Inc., MSBCA No. 2015 (1998); Appeal of Centex Construction Co., Inc., MSBCA 1419 (1990); Appeal of Helmut Guenschel, Inc., MSBCS No. 1434 (1989); Appeal of Cherry Hill construction, Inc., MSBCA No. 1313 (1988); Appeal of Rice Corp., MSBCA No. 1302 (1987). [↑](#footnote-ref-81)
82. SF&P § 15-220(b); Appeal of Maximus, Inc., MSBCA No. 2891 (2014); Appeal of Letke Security Contractors, Inc., MSBCA No. 2750 (2011); Appeal of NewMarket Enterprises Ltd., MSBCA No. 2718 (2010). [↑](#footnote-ref-82)
83. SF&P § 15-201 *et seq*.; COMAR 21.02.02. [↑](#footnote-ref-83)
84. SF&P § 15-216; State Government Article of the Maryland Code (SG) § 10-201 *et seq.* [↑](#footnote-ref-84)
85. Appeal of Gilford Corp., MSBCA Nos. 2871 & 2877 (2014); Appeal of U.K. Construction & Mgmt., LLC, MSBCA No. 2773 (2011); Appeal of S.E. Davis Const., LLC, MSBCA No. 2655 (2009); Appeal of Branch Office Supply, MSBCA No. 2372 (2003); Appeal of Chesapeake Bus & Equipment Co., MSBCA No. 1347 (1987); Appeal of Erik K. Straub, Inc., MSBCA No. 1193 (1984). [↑](#footnote-ref-85)
86. SF&P § 15-220(b)(1); COMAR 21.10.02.10(A); Appeal of Cosmos Air Purification Environmental Systems, Inc., MSBCA No. 2859 (2013); Appeal of S.A., Inc., MSBCA No. 2133 (2013); Appeal of Pipes & Wires Svcs., Inc., MSBCA No. 2709 (2010); Appeal of Trinity Protection Svcs., Inc., MSBCA No. 2496 (2005); Appeal of Nat’l Science Corp, MSBCA No. 2083 (1998); ); Appeal of American Space Planner, Inc., MSBCA 1963 (1996). [↑](#footnote-ref-86)
87. Appeal of Catalyst, Rx, MSBCA No. 2759, 2762, 2768, 2780 & 2784 (2012); Appeal of Aramark Correctional Svcs., LLC, MSBCA Nos. 2660, 2695 & 2696 (2010); Appeal of Orfanos Contractors, Inc., MSBCA No. 2602 (2008). [↑](#footnote-ref-87)
88. msbca.maryland.gov. [↑](#footnote-ref-88)
89. General Provisions Article of the Maryland Annotated Code (GP) § 4-101 thru 4-601. [↑](#footnote-ref-89)
90. 5 U.S.C. § 552. [↑](#footnote-ref-90)
91. SG § 4-301. [↑](#footnote-ref-91)
92. SF&P § 13-202(a); SF&P § 13-210(d)(3); COMAR 21.06.01.02C(4). [↑](#footnote-ref-92)
93. SG § 4-335. [↑](#footnote-ref-93)
94. SF&P § 13-210(c); COMAR 21.06.01.02E. [↑](#footnote-ref-94)