

COPPIN STATE UNIVERSITY

PROCUREMENT POLICIES AND PROCEDURES

COPPIN STATE



UNIVERSITY

ADMINISTRATION AND FINANCE PROCUREMENT DEPARTMENT



COPPIN STATE UNIVERSITY PROCUREMENT POLICIES AND PROCEDURES

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COPPIN STATE UNIVERSITY PROCUREMENT POLICIES AND PROCEDURES

SECTION I. - INTRODUCTION

The Board of Regents of the University System of Maryland approved on December 3, 1999, these procurement policies and procedures for the governance of procurements by the University System of Maryland consistent with the mandate of Chapter 515 of the Laws of 1999. Furthermore, the Board of Regents has delegated to the Chancellor of the University System of Maryland the authority to implement and to delegate, as appropriate, to the presidents of the constituent institutions, to the extent permitted by Board of Regents policy, authority to implement these policies and procedures.

Coppin State University, a constituent institution of the University System of Maryland, has adopted these policies and procedures, Effective January 12, 2000.

SECTION II - AUTHORITY AND DELEGATION

Pursuant to Chapter 515 of the Laws of 1999, Higher Education-University System of Maryland-Coordination, Governance and effective July I, 1999, "except as provided in Section 11-203(E) of the State Finance and Procurement Article The University System of Maryland is exempt from Division II of the State Finance and Procurement Article.^H

SECTION III. - PURPOSE

These procurement policies and procedures are designed to support and facilitate the educational, research, and public service missions of Coppin State University through the acquisition of goods and services by applying best methods and business practices that provide for public confidence in the University.

This document employs policies that are relevant to the USM institution environment while providing for a procurement process of quality and integrity, broad based competition, fair and equal treatment of the business community, increased economy in the procurement process, and uniform procurement procedures. These values promote the purposes of State procurement law; strike a balance between needed institution self-management and the Board of Regents' responsibility to govern the System.

SECTION IV. - APPLICABILITY

A. General Applicability

1. These policies and Procedures apply to contracts by Coppin State University for the acquisition, rental, purchase or lease of supplies, Services, Maintenance, Capital Improvements, and Architectural and Engineering services.
2. A procurement contract executed before the effective date of these policies or Procedures shall be governed by those laws, policies, and procedures in effect at the time of the contract execution.
3. Subcontracts and sub-recipients and other agreements entered into by the University in fulfilling its obligations under federal, state, local and private grants and contracts are not procurement actions and are therefore not subject to these policies and Procedures.
4. The Board of Regents may, from time to time, amend these policies and procedures in order that they remain consistent with current best methods and business practices. These changes shall be submitted to the Administrative, Executive, and Legislative Review committee of the Maryland General Assembly for comment.

B. Exclusions

These policies and procedures do not apply to:

1. The lease, sale, purchase, transfer, disposal or any other action involving an interest in Real Property.
2. The sale, transfer and disposal of surplus personal property.
3. Collaborative undertakings that support the mission of the University.
4. Reimbursement contracts for which user eligibility and cost is set by law or by rules and regulations (e.g. Medicaid).
5. Intergovernmental contracts or like-business agreements.
6. Purchases for the purposes of resale or remanufacture and subsequent resale.
7. Agreements creating contractual employee relationships.
8. Cultural, entertainment, intercollegiate athletic contracts, and exhibitions or displays on university property.
9. Surveying and evaluating architecturally, archaeologically, historically or culturally significant properties, and other than as to architectural services, preparing historic preservation planning documents and educational material.
10. Protection and administration of intellectual property rights,

11. Housing, food and related supply or service contracts for conference facilities
12. Contracts of the University System of Maryland and its constituent institutions for programs and operations located or implemented out of the United States.
13. Any procurement or contract to the extent of any conflict with a governing federal law, regulation, assistance instrument, or other requirement; or the terms of any gift.
14. Contracts for the purchase, use, or development of curricular materials.

SECTION V. - PROCUREMENT METHODS

Set forth below are the generally accepted methods of procurement, which may be adjusted, from time to time in the best interest of the University to reflect current business practices. Each institution of the USM shall be responsible for developing policies and procedures for use of the following methods that are consistent with those set forth below and with the needs of the individual institutions.

A. Simplified Procurement Procedures

1. Simplified Procurement Limit

The Simplified Procurement limit is \$100,000. Institutions may establish and implement its own Simplified Acquisition policies and procedures for purchases under \$100,000. An Institution may establish its own Simplified Procurement threshold based on its own requirements, but that limit may not exceed \$100,000. Procurement requirements shall not be artificially divided so as to constitute a simplified procurement.

2. Procurements Using a Purchasing Card

The preferred method of purchase is using the purchasing card in accordance with the policies and procedures set forth at individual institutions.

3. Non-competitive Small Procurement Orders

Where the simplified procurement order does not exceed \$5,000, competition is preferred, but is not required.

4. Competitive Simplified Procurements

For orders between \$5,000 and \$100,000 competition shall be sought to the extent practical, as determined by the Procurement Officer, considering such factors as the availability of vendors, dollar value of the procurement, cost of administering the procurement, time available to make the procurement including delivery time, and sound business judgment, consistent with the above.

(a) The Procurement Officer shall solicit quotations from a reasonable number of sources.

(b) The Procurement Officer may consider factors such as the following when deciding how many quotations will be solicited:

(i) Nature of the item or service to be purchased and whether it is highly competitive and readily available; or if it is relatively non-

competitive;

- (ii) Information obtained in making recent purchases of the same or similar item(s);
- (iii) The urgency of the proposed purchase;
- (iv) The dollar value of the proposed purchase; and
- (v) Past experience concerning a specific vendor's pricing.

(c) To the extent practicable, solicitations shall be published in a manner that best meets the needs of the solicitation. Examples of resources available to the Procurement Officer for publishing a solicitation includes but are not limited to:

- (i) Bid Board
- (ii) Maryland Contract Weekly
- (iii) Trade Journals
- (iv) Business Journals
- (vi) World Wide Web

5. Records

Adequate records shall be kept for simplified procurements and may include the following:

- (a) Name of authorized purchaser
- (b) Date of purchase
- (c) Name of vendor
- (d) If applicable, charge slips or telephone purchasing card log
- (e) Itemized receipt, packing slip, or itemized repair order, if applicable
- (f) Copy of written or published solicitation, if used
- (g) Solicitation documentation including names of vendors, copies of any written responses received, bid or offer amounts, basis for the award, identification of MBE/SBE vendors, or copy of sole source justification or explanation for single bid response
- (h) Copy of certification by appropriate fiscal authority of fund availability to satisfy the contractual requirement
- (i) Copy of purchase order or contract.

6. Modifications

Modifications to a simplified procurement shall be made in accordance with good business practice.

7. Required Contract Clauses

In addition to those tense, conditions and specifications necessary to the

particular procurement, a simplified acquisition shall include the University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document. .

B. Competitive Sealed Bidding

1. Use of Competitive Sealed Bids

Competitive Sealed bidding, also called "Invitation for Bid", is a method of procurement which results in a contract awarded to the lowest evaluated responsive bid from a responsible bidder based on the specifications set forth in the solicitation. Competitive sealed bids may be used. Typical reasons why Competitive Sealed Bids may be used include:

- (a) The award will be made on the basis of price and other price related factors
- (b) It is not necessary to conduct negotiations with the responding sources about their bids
- (c) Time permits the solicitation, submission and evaluation of sealed bids
- (d) There is a reasonable expectation of receiving more than one sealed bid

2. Required Solicitation Clauses

In addition to those terms, conditions and specifications necessary to a particular procurement, a written solicitation for competitive sealed bids must include the University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document.

3. Publishing

Invitations for bids shall be published in a manner that best meets the needs of the solicitation. Examples of resources available to the Procurement Officer for publishing a solicitation includes but are not limited to:

- (a) Bid Board
- (b) Maryland Contract Weekly *
- (c) Trade Journals
- (d) Business Journals
- (e) World Wide Web

* All invitations for bids shall be published in the Maryland Contract Weekly provided that doing so is consistent with the time requirements of the procurement.

4. Number of Bidders

It is the responsibility of the Procurement Officer to seek bids from an adequate number of suppliers.

5. Bid Due Date

It is the responsibility of the Procurement Officer to provide a reasonable time for prospective bidders to prepare and submit bids.

6. Pre-Bid Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-bid conferences is not mandatory.

7. Amendments or Addenda

If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential proposals that are known to have received a copy of the solicitation. All amendments shall include a statement to the effect that proposals are required to acknowledge receipt of any amendments to the request for proposals. If appropriate, the due date shall be adjusted to insure that sufficient time is given to prospective proposers to consider the information contained in the amendment for preparation of their responses.

8. Bid Opening

- (a) Once received, all bids and modifications to bids shall be placed in a secure place until the date and time for the bid opening. After the receipt of bids and before the bid opening, the University shall not disclose the identity of any bidder.
- (b) Bids are to be opened publicly. The name, bid price and other relevant information shall be read aloud or otherwise made available to those in attendance at the bid opening.
- (c) All bids received must be recorded, tabulated or summarized.
- (d) At a reasonable time, after the bid opening, all bids are available for public inspection.

9. Late Bids, Late Withdrawals, and Late Modifications

- (a) Any bid, request for withdrawal, or modification of a bid that is not received at the designated location, time, and date set forth in the bid documents will be considered late and will not be considered. Delivery of the bid to the specified location at the prescribed time and date is the sole responsibility of the bidder.

- (b) At the sole discretion of the Procurement Officer, exceptions may be made only when the reason for the late bid, late request for withdrawal or late modification of a bid, is due to the action or inaction of the Institutions personnel directing the procurement activity or their employees.
- (c) A record of the late bid, request for withdrawal, or modification of a bid shall be made in the appropriate procurement file.

10. Form of Bids

Bids must be submitted in writing by the specified due date and time. If bids are to be permitted by other than written and signed documents that must be stated in the bid documents bids may be submitted via such other forms (i.e., fax, electronic, etc.) as the bid documents specifically allow.

11. Bid Requirements

- (a) Bids shall be based upon the specifications contained in the solicitation.
- (b) Unless provided for in the solicitation documents that electronic forms of bid transmission are acceptable; each bid shall be typewritten or written legibly in ink.
- (c) If in writing, all erasures or alterations shall be initialed in ink by the person who signs the bid.
- (d) Unless otherwise indicated in the bid documents, each bid shall be submitted in an envelope that clearly indicates that it contains a bid and identifies the bid by the bid number.

12. Mistakes, Errors, and Withdrawals of Bids

- (a) Technicalities or minor irregularities in bids may be waived if the Procurement Officer determines that it shall be in the university's best interest. The Procurement Officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to the university's advantage to do so.
- (b) A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawal or correcting the bid as provided in V.B.8.
- (c) If the Procurement Officer knows or has reason to conclude that a mistake has been made; the bidder may be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges "mistake" the bid may be corrected or withdrawn upon the written approval of the

Procurement Officer if any of the following conditions are met:

- (i) If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.
- (ii) A bidder may be permitted to withdraw a low bid if:
 - (a) A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (b) The bidder submits proof of evidential value that clearly and convincingly demonstrates a mistake was made.
- (d) Mistakes may not be corrected after award of the contract except when the Procurement Officer makes a determination that it would be unconscionable not to allow the mistake to be corrected. Changes in price are not permitted. Corrections shall be submitted to and approved in writing by the Procurement Officer.
- (e) When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Officer shall prepare a determination showing that the relief was granted or denied in accordance with these policies and procedures.

13. Bid Evaluation and Award

- (a) Unless otherwise specified in the solicitation documents, bids shall remain irrevocable for a period of 90 days after the bid opening. If the Procurement Officer determines that this is not sufficient time to make an award, the time may be extended upon written request to the bidders. The Procurement Officer shall request of each bidder, that his bid shall continue to be irrevocable for the specified period of time.
- (b) An award will be made to the bidder offering the most favorable price that has been determined to be both responsible and responsive in meeting the requirements set forth in the solicitation. The Institution may make multiple awards if it is deemed to be in the best interest of the Institution, and if provided for in the solicitation. Bids may not be evaluated on criteria other than those set forth in the solicitation documents.
- (c) The Institution reserves the right to make an award as a total, item by item or by groups of items as determined to be in the best interest of the Institution.
- (d) If a single bid is received in response to a solicitation and the Procurement Officer determines that the bid is responsive and from a responsible bidder and other bidders had a reasonable opportunity to respond, a negotiated award may be made if it is determined by the Procurement Officer to be in the best interest of the University.

- (e) Unless it is specifically stated in the solicitation that multiple or alternate bids will be accepted, they may not be accepted. If they are to be accepted, the solicitation should set forth how such bids are to be treated.
- (f) Bids conditioned upon the award of another contract are not acceptable.

14. Tie bids

- (a) Tie bids are responsive bids from responsible bidders that are identical in price, terms, and conditions and which meet all the requirements and evaluation criteria set for in the invitation to bid.
- (b) The award shall be made to the in-state business if identical favorable bids are received from an in-State and out-of-state bidder. In order for the USM to achieve its overall minority participation goal, a contract may be awarded as follows:
 - (i) If identical favorable bids are received from an in-state certified minority business enterprise and an in-state nonminority business enterprise, or an out-of-state non-minority business enterprise, the award may be made to the certified minority business enterprise.
 - (ii) If identical favorable bids are received from tying in state or out-of-state certified minority business enterprises, the award may be made to the certified minority business enterprise having the greatest amount of certified minority business enterprise participation in the particular contract.
 - (iii) If identical favorable bids are received from tying in-state or out-of-state non-minority business enterprises, the award may be made to the non-minority business enterprise having the greatest amount of minority participation in the contract, including staff or certified minority business enterprise subcontract participation in the contract.
 - (iv) If identical favorable bids are received from in-state bidders or from out-of-state bidders and no rules for implementing a procedure for solving a tie bid apply, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.
- (c) Records shall be made of all invitations for bids on which tie bids are received.

15. Records

When bids have been rejected or canceled before the due date, bids shall be returned to the bidders unopened. When an award has been made copies of the opened bids and any supporting documentation shall be retained in the procurement file.

16. Multi-Step Sealed Bidding

A "multi-step sealed bid" is multiple-phase processes in which bidders first submit un-priced technical offers or samples, or both, to be evaluated by the Institution and then, those bidders whose technical offers or samples, or both, have been found to be acceptable submit price bids which are then considered. The procedures set forth in Section C12 are to be followed when debriefing unsuccessful proposors.

C. Competitive Sealed Proposals

1. A Request For Proposals (RFP)

This procurement method employs an RFP for the solicitation of Competitive Sealed Proposals which are evaluated on the basis of factors that include but are not limited to price. Evaluation shall be based on the factors set forth in the request for proposals in order to determine which proposal best meets the needs of the Institution.

2. Issuance and Content of Proposals

- (a) The Procurement Officer shall issue a written solicitation containing all information necessary for prospective proposors to prepare a proposal. Identical information shall be furnished to all potential proposors. If indicated in the solicitation, facsimile or electronic proposals may be authorized.
- (b) A copy of the solicitation shall be provided to a reasonable number of potential proposors known to the university and those requesting a copy of the solicitation in order to assure adequate competition.
- (c) The Procurement Officer shall insure that sufficient time is given to potential proposors to prepare responses.
- (d) An RFP shall include:
 - (i) date, time and place for receipt of proposals.
 - (ii) the evaluation factors and an indication of the relative importance of each evaluation factor (including price). Numerical rating systems may be used, but are not required.
If used, numerical factors need not be disclosed in the solicitation.

- (iii) a statement of the services, items or equipment required.
- (iv) a statement as to how and when price proposals will be submitted (if not received at the same date and time as technical proposals).
- (v) all mandatory solicitation requirements.
- (vi) all required contract terms and conditions, certifications, and securities.
- (vii) at the discretion of the Procurement Officer, an Economic Benefit Evaluation Factor may be applied. Its relative weight to the other technical evaluation factors shall be set forth in the RFP. Example of the Maryland Economic Benefit elements may be provided in the RFP, but other benefits directly or indirectly may also be considered.
- (viii) a public information act notice which is a mandatory provision for all requests for proposals. The following notice is preferred

"Proposors should give specific attention to the identification of those portions of the proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, title 10, Subtitle 6, Annotated Code of Maryland."

- (ix) If any amendments or addenda are required, the Procurement Officer shall send a copy of the amendments to all potential proposors that are known to have received a copy of the solicitation. All amendments shall include a statement to the effect that proposors are required to acknowledge receipt of any amendments to the request for proposals. If appropriate, the due date shall be adjusted to insure that sufficient time is given to prospective proposors to consider the information contained in the amendment for preparation of their responses.

3. Requirement for Notice

Public notice shall be given in the same manner as provided in for competitive sealed bids in Section Y.B.3 above.

4. Pre-Proposal Conference

Unless otherwise stated in the solicitation document, attendance of prospective bidders at pre-proposal conferences is not mandatory.

5. Receipt of Proposals

- (a) All proposals shall be placed in a secure place until the due date and time. Proposals may not be opened publicly. The Procurement Officer shall ensure that appropriate procedures are in place for the opening of proposals.
- (b) A register of proposals shall be prepared identifying each proposer submitting a proposal. In no event shall the register be disclosed subsequent to the due date of the Financial offers and prior to the award.
- (c) After contract award, proposals shall be open to the public subject to the provisions of State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

6. Mistakes, Errors, and Withdrawal of Proposals

Mistakes, errors and withdrawals of proposal shall be treated in the same manner as provided for in competitive sealed bids in Section V.B.1 I above.

7. Late Proposals, Late Modifications, and Late Withdrawals

Late proposals, late modifications and late withdrawals shall be handled in accordance with Section V.B.8 above.

8. Classification of Proposals

- (a) The Procurement Officer may classify proposals as:
 - (i) Reasonably susceptible of being selected for award; or
 - (ii) Not reasonably susceptible of being selected for award.
- (b) Proposors judged by the Procurement Officer as not responsible or proposals not reasonably susceptible of being selected for award, shall be so classified and the proposer is so notified.

9. Evaluation of Proposals

- (a) Prior to the technical evaluation, the Procurement Officer shall establish the basis for the evaluation.
- (b) During the evaluation of the proposals, information contained in proposals shall not be disclosed to a prospective proposer or anyone outside of the evaluation committee except to those deemed

necessary to assist the committee in evaluating the proposals. Any outside evaluator or person providing assistance to the committee shall be advised that the information discussed will be used only for evaluation purposes and shall not be further disclosed.

- (c) Proposals determined to be reasonably susceptible of being selected for award shall be evaluated as set forth in the solicitation.
- (d) Technical and price proposals shall be evaluated independently of each other. Price evaluations may be done at the completion of the technical evaluation or at the same time as the technical evaluation so long as it is done independently and the results not revealed until such time as the technical evaluation is completed.
- (e) Performance (past and present) may be used as an evaluation factor in determining the proposer's ability to perform under the contract. If performance is to be considered, that should be stated in the solicitation. Proposors shall be asked to provide references. In addition, the Institution may use itself as a reference as well as other references that may be known to the university but not provided by the proposer.
- (f) Multiple or alternate proposals, if permitted by the solicitation documents, shall be handled in accordance with Section V.B.12.(e) above.
- (g) At the discretion of the Procurement Officer following the recommendation by the evaluation committee, a short-list of qualified proposals may be established during the technical evaluation. Only those firms short-listed would continue in the evaluation process. Those firms not short-listed shall be so advised. At this point, a second phase of the technical evaluation shall take place. The second phase may include oral presentations with further discussions and refinements with the short-listed firms.
- (h) At the conclusion of the evaluation, the Procurement Officer shall document the following:
 - (i) An analysis of the technical proposals including an assessment of each proposer's ability to meet the technical requirements of the solicitation;
 - (ii) A summary of the findings of the evaluation committee.
- (i) Award shall be made to the responsible proposer who's overall technical and financial proposal was evaluated as best meeting the needs of the University as set forth in the RFP. The University may make multiple awards if it is deemed to be in the best interest of the University, and if provided for in the solicitation

10. Discussions and/or Negotiations

- (a) At the sole discretion of the Procurement Officer, discussions and/or negotiations may be held.
- (b) Proposors shall be treated fairly and equally with respect to any opportunity for discussions, negotiations and clarifications. The Procurement Officer shall establish the procedures and schedule for conducting any discussions.
- (c) Discussions may take place at any point during the evaluation process. To the extent that information revealed during the discussions affects the ranking of proposors during the technical or price evaluation phase, the rankings may be adjusted accordingly.
- (d) If any discussions reveal information that requires a substantive clarification of, or change to the request for proposals, the Procurement Officer shall amend the request for proposals to incorporate the change(s) and a copy of the amendment shall be sent to all proposors still under consideration.
- (e) During discussions, the Procurement Officer shall not disclose or permit to be disclosed any information from a competing proposal, advise a proposer of its standing relative to another proposer.
- (f) The Procurement Officer may allow the proposer a reasonable opportunity to submit any technical, cost, financial, or other information and materials, or revisions to its proposals that may result from the discussions.
- (g) A record of each discussion shall be kept in the procurement file.

11. Best and Final Offers

- (a) When the Procurement Officer determines it is in the best interest of the University, proposors may be permitted to revise their proposals by submitting a best and final offer or series of best and final offers.
- (b) The Procurement Officer shall establish a due date and time for best and final offers.
- (c) A proposer's previous offer shall be deemed final unless a new best and final offer is submitted as requested.

12. Debriefing of Unsuccessful Proposors

- (a) Unsuccessful proposors may submit a written request for a debriefing to the Procurement Officer within ten days after the proposer knew, or should have known its proposal was unsuccessful. Debriefings shall be limited to discussion of the specific proposer's proposal only and not include a discussion of a competing offer's proposal. Debriefings shall be conducted at the earliest feasible time.
- (b) The debriefing may include information on areas in which the

- (c) unsuccessful proposer's proposal was deemed weak or insufficient. Debriefing may not include discussion or dissemination of the thoughts, notes or rankings of individual members of an evaluation committee.
- (d) Debriefing may include a summary of the Procurement Officer's rationale for the selection decision and recommended award.

13. Required Solicitation Clauses

In addition to those terms, conditions, and specifications necessary to the particular procurement, a written solicitation for a competitive sealed proposal must include the current University System of Maryland Uniform Contract Terms and Conditions in Appendix A of this document.

14. Award of Competitive Sealed Proposals

Notice of award shall be published in the Maryland Contract Weekly and/or by direct notification to all proposors.

D. Sole Source Procurements

1. Reason for Use of Sole Source

Procurement without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude the use of a competitive process. If the Procurement Officer determines that there is only one source that will satisfy the requirements and/or circumstances present, the Procurement Officer may negotiate and award a contract without competition to the sole source.

2. Documentation

- (a) In each instance where the sole source procedures set forth in this policy are used, the Procurement Officer shall make a written determination as to its appropriateness.
- (b) Sole source procurements in the amount of \$100,000 or less may be approved by the Procurement Officer.

3. Continuing Need for Sole Source

The Procurement Officer shall take reasonable steps to avoid using sole source procurement except in circumstances where it is both necessary and in the best interests of the Institution. The Procurement Officer shall take action, whenever possible, to avoid the need to continue to procure the same construction, commodities, supplies and/or services without competition.

4. Sole Source Procurement Procedures

- (a) The Procurement Officer may use a letter to request a proposal for a sole source procurement. The letter shall refer to, or attach all terms and conditions of the proposed contract.
- (b) The Procurement Officer shall ensure that each sole source contract contains all of the required clauses, representations, terms, conditions and certifications, in accordance with the requirements of these policies and procedures.
- (c) The Procurement Officer has a duty to negotiate the most favorable price and terms and conditions notwithstanding the sole source nature of the procurement.

E. Emergency Procurement

1. Defined

When an emergency condition exists that prevents the use of formal competitive procurement methods in awarding or modifying a contract that is essential to the University, the University may conduct procurement on an emergency basis. Emergency procurements may be negotiated on a sole source or limited competition basis as dictated by the circumstances surrounding the emergency.

2. Determining Need for an Emergency Procurement

An emergency condition justifies the use of an emergency procurement when that condition threatens one (1) or more of the following:

- (a) The health or safety of any person(s) or animals(s);
- (b) The preservation or protection of property; or
- (c) The continuance of necessary University functions.

3. Limits of an Emergency Procurement

The emergency procurement shall be limited to the procurement of only the types of items and quantities or time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

4. Documentation

As soon as practicable, the Procurement Officer shall prepare a written determination that sets forth the justification for the emergency procurement. The determination shall include the following:

- (a) The basis and justification for the emergency procurement including the date the emergency first became known;
- (b) A listing of the items and/or services procured;
- (c) A description of the efforts made to ensure that proposals or offers are received from as many potential sources as possible under the circumstances, or a sole source justification with the appropriate sole source provisions.

5. Procedures for Emergency Procurement

- (a) The Procurement Officer shall not be required to publicize the solicitation of a procurement made on an emergency basis.
- (b) The Procurement Officer shall attempt to solicit offers or proposals from as many potential vendors as practicable under the emergency condition.
- (c) A Procurement Officer may use any acceptable form of bid (e.g., written, fax, electronically transmitted, phone etc.) to solicit proposals for an emergency procurement.
- (d) The Procurement Officer shall ensure that proper records of each emergency procurement is maintained.

F. Unsolicited Proposals

1. Defined

At the recommendation of the Procurement Officer, the University may accept an unsolicited proposal for evaluation if the proposal:

- (a) is innovative and unique;
- (b) was independently originated and developed by the Propos or;
- (c) was prepared without the supervision of the University;
- (d) includes sufficient detail to permit a determination that University support would be worthwhile; and
- (e) shows that the proposal would benefit the University.

2. Documentation

Unsolicited proposals shall contain information to permit consideration in an objective and timely manner, such as;

- (a) The Proposor's name and address and type of organization, such as profit, nonprofit, educational, or certified minority business enterprise;
- (b) The names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

- (c) The identification of proprietary data to be used only for evaluation purposes;
- (d) The signature of a person authorized to represent and contractually obligate the proposer;
- (e) The proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;
- (f) The period of time for which the proposal is valid;
- (g) The type of contract preferred; and
- (h) The proposed duration of the effort.

3. Evaluation of Unsolicited Proposals

When performing an evaluation of an unsolicited proposal, the following factors shall be considered, in addition to any others appropriate for the particular proposal:

- (a) The unique and innovative methods, approaches, or concepts demonstrated by the proposal;
- (b) The overall scientific, technical, or socio-economic merits of the proposal;
- (c) The potential contribution of the effort to the University's specific mission;
- (d) The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives; and
- (e) The qualifications, capabilities, and experience of the proposed team leader or key personnel who are critical to achieving the proposal objective.

4. Return of Unsolicited Proposals

The Institution must reject an unsolicited proposal and it shall be returned to the proposer, citing reasons, when its substance meets any of the following:

- (a) It is available to the Institution without restriction from another source;
- (b) It closely resembles a pending competitive procurement; or
- (c) It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to the Institution on the basis of competitive proposals.
- (d) If the proposal is deemed not in the best interest of the University or is deemed by the University as not of value to the University.
- (e) If the Institution has no requirement for what is proposed and/or the proposal is not affordable.

5. Requirement to Make an Award

A favorable evaluation of an unsolicited proposal does not, by itself, require the University to make an award.

6. Negotiations

The Procurement Officer may negotiate.

G. Procurement by Cooperative Purchasing Agreements

1. The University may participate in, conduct, sponsor or administer a cooperative purchasing agreement. The purpose of such agreements is to promote efficiency and savings that can result from cooperative purchasing. This includes but is not limited to agreements with any of the following:

- (a) The federal government or an agency or other instrumentality of the federal government;
- (b) The State of Maryland, another state, or an agency or other instrumentality of another state;
- (c) A bi-state or multi-state agency;
- (d) A county, municipal corporation, or other political subdivision of the State or of another state, or an agency or other instrumentality of the political subdivision;
- (e) Other institutions of higher education and the University of Maryland Medical System.
- (f) A cooperative or organization established for the purpose of establishing contracts to aggregate the common requirements of similar institutions for maximize economies of scale when soliciting bids or proposals.
- (g) Alumni associations, foundations, and faculty practice organizations recognized by the Board of Regents.

2. The institution's solicitation must state that the contract may be made available to other agencies for cooperative procurements.

H. Use of Contracts Established by Other Institutions or Agencies

1. Institutions of the University System of Maryland may use contracts established by other Agencies or Institutions provided that use of the contract is in the best interest of the Institution, and provided that the contract was awarded after a procurement process (including Sole Source or Negotiated Procurement), and provided that the terms of the applicable contract does not prohibit use by the University System of Maryland. Examples of Institutions whose contracts are acceptable for use include, but are not limited to, other States Agencies or Instrumentalities, The Federal Government and its Instrumentalities, The University of Maryland Medical System, Educational and Institution Cooperative (E & I

Coop), and the Maryland Hospital Association.

I. Architectural and Engineering Services

1. General

The University System of Maryland is committed to a quality-based selection process in the procurement of architectural and engineering services.

2. Applicability

These *AIE* policies and procedures are for the procurement and award of contracts, consultant agreements or other obligations for architectural and/or engineering services.

3. Request for Procurement of Services

(a) The procurement and management of AIE contracts shall be consistent with the delegation of service center procurement and management authority granted to the University of Maryland, Baltimore and the University of Maryland, College Park (herein referred to as "USM Service Center"), as established by the University System of Maryland Board of Regent policy VIII-10.30 - Policy on Authority Concerning Certain Public Improvement Projects.

(b) An institution of the University System of Maryland (USM) desiring architectural and/or engineering services shall submit to the appropriate USM Service Center the following:

- (i) A program for the project which sets forth all information necessary to design the proposed improvement;
- (ii) Certification that the program has been approved by the appropriate State agencies; and
- (iii) Verification of funding.

(c) After receipt of the above documents, the USM Service Center shall proceed with the procurement of architectural and/or engineering services.

4. Qualification Committee

The Procurement Officer shall establish a Qualification Committee composed of appropriate representatives from the USM Service Center and the applicable USM client institution.

5. Solicitation

(a) The USM Service Center shall place announcements in appropriate publications indicating a request to procure architectural and/or engineering services. (b) Solicitation Documents: The USM Service Center shall make available a set of solicitation documents to all architectural engineering firms who request them.

(c) Procurement Process:

(i) Technical Proposal Phase:

(a) Initial Phase Technical Proposal:

(i) Interested architectural and/or engineering firms will be requested to provide an Initial Technical Proposal which will address specified technical criteria such as U.S. Government Standard Forms 254 (Architect Engineer Related Services Questionnaire) and 255 (Architect-Engineer Related Services Questionnaire for Specific Project), Current Workload, Economic Benefit and Minority Business Enterprise participation.

(ii) The Qualification Committee will evaluate each architectural engineering firm's initial technical proposal based on the specified technical criteria.

(iii) Based upon its evaluation, the Qualification Committee will rank all architectural engineering firms.

(iv) As deemed appropriate by the Qualification Committee or as specified in the solicitation documents, one of the following steps will be taken:

(a) Based on the ranking, the Qualification Committee will provide a ranking report to the Procurement Officer. Upon approval of this report, the Procurement Officer shall:

(i) notify all firms and

(ii) advise the candidate firm ranked number one, or in the case of a solicitation in which multiple awards are applicable, the high ranked candidate firms will proceed to the Price Proposal! Negotiation Phase [5(c)(ii)]; or

(b) Based on the ranking, the Qualification

Committee will determine the short-listed firms who will advance to the Second Phase Technical Proposal [S(c)(i)(b)] and the Procurement Officer will notify all proposing firms of the names of all proposers indicating those who have been short-listed.

- (b) Second Phase Technical Proposal:
 - (i) Short-listed firms will be requested to submit Technical Proposals per the guidelines set forth in the solicitation documents or as requested by the University.
 - (ii) The Qualification Committee will evaluate each architectural! engineering firm's technical proposal based on the specified technical criteria.
 - (iii) If deemed appropriate by the Qualification Committee or as specified in the solicitation documents, interviews will be scheduled with the short-listed firms.
 - (iv) The Qualification Committee will rank all short-listed architectural/engineering firms based on the technical proposals and interviews, as applicable.
 - (v) The Qualification Committee will provide a ranking report of short-listed firms to the Procurement Officer.
 - (vi) Upon approval of the Qualification Committee's ranking report, the Procurement Officer shall notify all short listed firms and the candidate firm ranked number one or, in the case of a solicitation in which multiple awards are applicable, the high ranked candidate firms and proceed to the Price Proposal Negotiation Phase [SC(ii)].
- (ii) Price Proposal Negotiation Phase:
 - (a) The Procurement Officer shall designate a negotiation committee composed of appropriate representatives from the USM Service Center and the applicable USM client institution (at its determination).
 - (b) The candidate firm or firms shall submit a detailed price proposal in accordance with the solicitation documents.
 - (c) Negotiations shall be conducted between the candidate firm or firms and the negotiation committee.
 - (d) If the negotiation committee is unable to negotiate a

satisfactory contract, the committee shall advise the Procurement Officer of such.

- (e) If the Procurement Officer determines that a satisfactory contract cannot be negotiated, the negotiations shall be terminated. In such instances, the USM Service Center shall either commence negotiations with the next ranked candidate firm or firms or re-advertise the procurement as it deems appropriate.
- (f) Upon completion of successful negotiations, the Negotiation Committee will forward its recommendation for contract award to the Procurement Officer.

6. Review of A/E Selection Process

- (a) The Procurement Officer will review the rankings of the short-listed Architectural/Engineering firms and the final fee negotiations with an USM Service Center Executive Group consisting of a public member, a representative of the USM client institution, and a minimum of two (2) executive management staff from the Service Center.
- (b) Upon approval of the Executive Group, the Procurement Officer shall proceed to the award phase.

7. Award Phase

- (a) Should the *A/E* award amount be \$500,000 or less, the Procurement Officer will proceed with awarding the contract to the successful *A/E* firm or firms.
- (b) Should the *A/E* award amount exceed \$500,000, the Procurement Officer will forward the contract recommendation on an action agenda for Board of Public Works approval.

SECTION VI. - CONTRACT TYPES

A. General

1. A wide selection of contract types is available to Institutions in order to provide needed flexibility in acquiring the variety and volume of supplies, services and maintenance required by Institutions. Contract types vary according to:

- (a) The degree and timing of the responsibility assumed by the contractor for cost of performance; and
- (b) The amount and nature of profit incentive offered to the contractor for achieving or exceeding specific standards or goals.

2. Contract types are grouped into two broad categories: fixed price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed -price, in which the contractor has full responsibility for the performance cost and resulting profit (or loss), to cost-plus-fixed fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts, in which the contractor's responsibility for performance costs and profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

3. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no contract using Federal funds shall be awarded on a cost plus- percentage of cost basis.

B. Factors **in** Selecting Contract Types

1. There are many factors that the Procurement Officer should consider in selecting the contract type. They include but are not limited to the following:

- (a) Price competition
Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Institution's best interest.
- (b) Price analysis
Price analyses may provide a basis for selecting the contract type.
- (c) Cost analysis
Uncertainties involved in performance and their impact on costs should be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be selected.
- (d) Urgency of the requirement
If urgency is a primary factor, the Institution may choose to assume a greater proportion of risk or offer incentives to ensure timely contract performance.

(e) Period of performance

In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.

(1) Contractor's Capability

Technical capability and financial responsibility of the contractor.

(g) Adequacy of contractor's accounting system

Except for a firm fixed-price contract, the Procurement Officer should determine that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific type of contract contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

SECTION VII - CONTRACT ADMINISTRATION

A. PURPOSE AND SCOPE

With increased privatization and use of term contracts for administrative support within Higher Education, it is important for each institution to develop a methodology for active contract administration. Only through continual active involvement of contract administrators, working in partnerships with Procurement Officers, will the institutions contractual performance goals be achieved.

Contract administration begins with the signing or execution of a contract or purchase order. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the University System of Maryland's purchasing system demands the goods or services are furnished as specified in the contract. Contract administration includes all actions taken by the institution relative to a specific contract after the award is made. A contract administrator is typically identified in each contract.

B. AUTHORITY AND RESPONSIBILITY

Contract administration authority may be delegated by the Procurement Officer..

1. The Procurement Officer is responsible for the legal, technical and administrative sufficiency of Institution contracts and shall seek legal, technical and other advice within the Institution in fulfilling these responsibilities.
2. Contract administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments and closeout.

C. APPROVAL OF AWARD ACTIONS

In addition to the authority and delegations herein, the following notifications and approvals apply:

1. Prior notification must be given in writing to the Vice Chancellor for Administration and Finance, University System of Maryland Office for any of the following procurements exceeding \$1 million.
 - (a) Competitive Sealed Bids
 - (b) Competitive Sealed Proposals
 - (c) Unsolicited Proposals
 - (d) Contracts Established by other Institutions or Agencies *A/E*
 - (e) Services

2. Prior approval must be received from the University System of Maryland Board of Regents (BOR), consistent with current BOR policy and procedures, for any procurement exceeding \$5 million.

3. Prior notification must be given in writing to the Vice Chancellor for Administration and Finance, University System of Maryland Office for any sole source procurement exceeding \$100,000.

4. Any sole source procurement exceeding \$500,000 must receive prior approval of the Vice Chancellor for Administration and Finance, University System of Maryland Office.

5. Prior notification must be given to the Vice Chancellor for Administration and Finance, University System of Maryland Office for sole source personal service contracts in excess of \$25,000.

D. BOARD OF PUBLIC WORKS

Capital improvement and service contracts exceeding \$500,000 and modifications' in excess of \$500,000 to such contracts shall be submitted to the Board of Public Works for approval.

E. CONTRACT EXECUTION

1. Only the Procurement Officer, or other duly authorized representative, may enter into a contract on behalf of the Institution.

2. The Procurement Officer, or his/her duly authorized representative, should sign the contract documents after the contract documents have been signed by the contractor.

3. The contract shall be signed by the appropriate representative(s) of the contractor with the authority to bind the firm to the terms of the contract.

4. A contract with a joint venture may involve any combination of individuals, partnerships or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section.

F. CONTRACT MODIFICATIONS

1. Only a Procurement Officer is authorized to execute a contract modification on behalf of the Institution.

2. A contract may be modified in accordance with the University System of

Maryland Uniformed Contract Terms and Conditions in Appendix B of this document.

3. Contract modifications in excess of \$500,000 to capital improvement and service contracts shall be reported to the Board of Regents through the Vice Chancellor for Administration and Finance.

G. DELIVERY AND PERFORMANCE

The time of delivery or performance is an essential contract element and shall be clearly stated in each contract. Delivery or performance must be met by the date or period specified or the contractor may be considered to be in default.

H. PAYMENT

The contract documents are to include the process by which payments are to be made.

I. CLOSEOUT OF CONTRACTS

Institutions shall adopt internal policies and procedures to ensure contract closeout is conducted properly.

SECTION VI - VENDORS

A. Debarment/Suspension

1. The University System of Maryland shall abide by the Maryland Code of Regulations (CO MAR) Title 21, Subtitle 08 with regard to all debarments/suspensions.
2. In determining the status of a business or person with regard to debarment/suspension in the State of Maryland, the University System of Maryland shall refer to the Maryland Board of Public Works published list of Businesses & Persons Suspended or Debarred.

B. Vendor Pre-qualifications

The Procurement Officer may limit bids to those vendors pre-qualified after public notice in accordance with Section V.B.3.

C. Vendor Responsibility

1. The Procurement Officer shall make purchases from and award contracts' only to responsible contractors.
2. In the absence of information clearly indicating that the prospective contractor is responsible, the Procurement Officer shall make a determination of non-responsibility .
3. Factors to be used in determining whether a vendor is responsible may include, but are not limited to:
 - (a) Financial resources adequate to perform the contract, or the ability to obtain them;
 - (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - (c) A satisfactory performance record;
 - (d) A satisfactory record of integrity and business ethics;
 - (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
 - (f) Compliance with applicable licensing and tax laws and regulation;

- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- (h) Other qualifications and eligibility criteria necessary to receive and award under applicable laws and regulations.

4. If the Procurement Officer determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the Procurement Officer may determine the prospective contractor to be non-responsible.

5. The prospective contractor shall promptly supply information requested by the Procurement Officer regarding the responsibility of the prospective contractor.

6. If the prospective contractors fail to supply the information as requested, the Procurement Officer shall make the determination of responsibility or non-responsibility based upon available information.

7. The Procurement Officer may use the following sources of information, as appropriate, to support determinations of responsibility or non-responsibility:

- (a) The Maryland State Board of Public Works list of Businesses and Persons Suspended or Debarred;
- (b) Records, past performance, and experience data, including verifiable knowledge of USM and State of Maryland personnel;
- (c) Being in good standing with the State, including information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.
- (d) Federal disqualification listing of ineligible and debarred contractors.

8. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Procurement Officer shall make, sign, and place in the contract file a determination of Non-responsibility, which shall state the basis for the determination and so notify the prospective contractor.

SECTION IX. - SOCIO-ECONOMIC POLICIES

Pursuant to Chapter 515 of the Laws of 1999, the University System of Maryland shall comply with the provisions of Title 14, Subtitles 1 (Preferences to Benefit Disadvantaged Individuals) and 3 (Minority Business Participation) of the State Finance and Procurement Article of the Annotated Cod of Maryland.

In addition, Institutions shall recognize reciprocal certification with other governmental agencies, but would not include these procurements in reporting governed under current State law.

SECTION X - PROTESTS AND CLAIMS

A. General

1. An aggrieved party shall exhaust all administrative remedies provided in this section before seeking judicial review.
2. A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.
3. Under this section, if the last day for taking an action falls on a day when the filing office is closed; the file date will be the next day the filing office is open.

B. Protests

1. Definitions The following words have the meanings indicated:
 - (a) Filed: received by the Procurement Officer.
 - (b) Interested party: an actual or prospective bidder, proposer or contractor that may be aggrieved by the solicitation or award of a contract, or by a protest.
 - (c) Protest: a complaint relating to the solicitation or award of a procurement contract.
 - (d) Protestor: means any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files the protest.
 - (e) Appeals Board: means the Maryland State Board of Contract Appeals.
2. Filing a Protest
 - (a) An interested party may protest to the appropriate Procurement Officer against the award or the proposed award of a contract by an institution of the University System of Maryland.
 - (b) The protest shall be in writing and addressed to the Procurement Officer.
3. Timing for Filing
 - (a) 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 and time of receipt of initial proposals.
 - (b) A protest based upon alleged improprieties in a solicitation that did not exist in the original solicitation but which is subsequently incorporated in an amendment to the solicitation shall be filed not later than the solicitation closing date and time for

receipt of bids or proposals identified in the amendment (or in the original solicitation, if the opening dates and time was not changed by amendment).

(c) In cases other than those covered in 3.(a). and (b). above, protests shall be filed not later than seven (7) days after the basis for the protest is known or should have been known, whichever is earlier.

(d) A protest received by the Procurement Officer after the time limits described above may not be considered.

(e) All costs associated with filing and prosecuting a protest shall be borne by the protestor.

4. Requested Information

(a) The written protest shall include the following information:

- (i) The name and address of the protestor;
- (ii) Appropriate identification of the procurement;
- (iii) A statement of reasons for the protest; and,
- (iv) Supporting exhibits, evidence or documents to substantiate the reasons for the protests.

(b) Any additional information or substantiation requested by the Procurement Officer shall be submitted within five (5) days after receipt of the request by the Protestor. Failure of any party to comply with a request for information or substantiation by the Procurement Officer may result in a resolution of the protest without consideration of any response to the request that is not timely filed.

(c) Upon written request, the Procurement Officer shall make available to any interested party information submitted that bears on the substance of the protest except when information is confidential, or otherwise is permitted or required to be withheld by law. Persons who wish to keep information submitted by them confidential shall so request specifically identifying the information within documents submitted, and indicating on the front page of each document that it contains information not subject to disclosures.

5. Notification to the Office of the Attorney General

The Procurement Officer shall submit a copy of the protest to the Office of the Attorney General upon receipt of the protest and shall, as appropriate, consult with legal counsel.

6. Negotiations with Interested Parties

The Procurement Officer may conduct discussions and, if

appropriate, negotiations with the protester or any other interested party and may resolve the protest by agreement with anyone or more interested parties. The agreement shall be in writing and approved by the appropriate institutional authority.

7. Decision by the Procurement Officer

(a) A decision on a protest shall be made by the Procurement Officer in writing as expeditiously as possible after receiving all relevant, requested information.

(b) The decision of the Procurement Officer shall be reviewed and approved by the appropriate institutional authority.

(c) The decision of the Procurement Officer shall include:

(i) a decision of the controversy and

(ii) a statement of the decision, with supporting material.

(iii) If the protest is not sustained, a paragraph substantially as follows shall be included in the decision. "This decision is the Procurement Officer's final action. This decision may be appealed to the Maryland State Board of Contract Appeals in accordance with Code of Maryland Regulations 21.10.07.02. If you decide to take such an appeal, you must file written notice of appeal to the Appeals Board within 10 days from the date you receive this decision." This paragraph shall also include the current address of the Appeals Board.

(d) The Procurement Officer shall furnish a copy of the decision to the protester and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of its receipt.

8. Appeals

(a) Protestors are required to seek resolution of their complaints with the Procurement Officer.

(b) A subsequent appeal by a protester shall be to the Appeals Board and shall be filed within 5 days of receipt of the Procurement Officer's decision. All costs associated with filing and prosecuting an appeal shall be borne by the Protestor.

(c) An appeal received by the Appeals Board after the time prescribed in 8.(b) above, may not be considered.

(d) The appeal shall include all information submitted by the protester to the Procurement Officer and a copy of the Procurement Officer's final decision.

(e) Any additional information or substantiation requested by the Appeals Board shall be submitted within five 5 days after receipt of the request by the protester. Failure of any party to

comply with a request for information or substantiation by the Appeals Board may result in a resolution of the appeal without consideration of any response to the request that is not timely filed. (t) The Appeals Board will conduct a meeting with the protestor and the Procurement Officer on the protest.

(g) All appeals shall be decided upon the written information submitted to the Appeals Board, testimony given at the hearing and such additional information as may be requested by the Appeals Board.

(h) A decision on an appeal shall be made by the Appeals Board in writing as expeditiously as possible after receiving all relevant and/or requested information. All decisions by the Appeals Board shall be made final.

9 . Awards of Contracts Pending Protests and Appeals

(a) If a timely protest has been filed, the contract may be awarded if:

(i) a finding is made that execution of the contract without delay is necessary to protect substantial State or University interests or

(ii) the Appeals Board makes a final decision concerning the appeal.

(b) Unless the Board of Public Works has final authority to approve the award, the finding may be made by the Procurement Officer, subject to review by the appropriate University authority.

(c) If the Board of Public Works has final approval authority, the Board of Public Works will make the finding.

c. Claims

All claims shall be handled in accordance with Title 15, Subtitle 2 of the State Finance and Procurement Article, Annotated Code of Maryland and the Code of Maryland Regulations, Title 21, Subtitle 10 Administrative and Civil Remedies, Chapters 04, 05, and 06 as may be amended from time to time.

SECTION XI - DEFINITIONS

ACQUISITION - To obtain through best methods and business practices.

ALTERNATE BID - A dollar amount to be added to or subtracted from the bid for a variation in the item being bid upon. Alternate bids may be either add or deduct alternate bids.

APPEAL - Action taken by a bidder, proposer (actual or prospective) or by a vendor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a procurement decision.

APPEALS BOARD - The Maryland State Board of Contract Appeals.

ARCHITECTURAL SERVICES

1. Architectural services are professional or creative work that is performed in connection with the design and supervision of construction or landscaping, and that requires architectural education, training, and experience.
2. Architectural services include consultation, research, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, and electrical engineers and other consultants.
3. Architectural services do not include construction inspection services or services provided in connection with an energy performance contract.

AWARD - The transmission by the procurement agency, after all required approvals have been obtained, of the executed contract or written notice of award to the selected vendor.

BEST AND FINAL OFFERS - A procedure conducted that permits qualified offerors to revise their initial proposals when determined by the Procurement Officer to be in the best interest of the University.

BID - A statement of price, terms of sale, and description of the supplies, services, construction, or construction-related services offered by a bidder in response to an invitation for bids under procurement by competitive sealed bidding or comparable small procurement procedures.

BID BOARD - A bulletin board in a public place displaying solicitations or announcements of the availability of solicitations.

BID SECURITY - In addition to bid bond, acceptable security includes:

1. a bond in a form satisfactory to the University underwritten by a surety company authorized to do business in the State.
2. a bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
3. a pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
4. an irrevocable letter of credit in a form satisfactory to the Procurement Officer and issued by a financial institution approved by the State Treasurer.

BIDDER - One who submits an offer or bid in response to a solicitation.

BLANKET PURCHASE AGREEMENT (BP A) - An arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period and specifically identifies these persons authorized to accept goods.

BOARD - The Board of Public Works.

BROKER - A person that conducts business (other than real estate, investment, or insurance sales) on a pass-through basis and with respect to:

1. Supplies:
 - (a) Does not own, operate, or maintain a place of business in which supplies of the general character required under the contract are kept in stock in the regular course of business,
 - (b) Does not regularly assume physical custody or possession of supplies of comparable character to those offered to the State, or
 - (c) Exclusively acts as a middleman in the provision of supplies offered to the State;
or
2. Services: does not regularly maintain the capability, capacity, training, experience, and applicable regulatory licensing to directly perform the principal tasks of a contract with the State, and acquires the services elsewhere, for the benefit of the State.

BUSINESS - Any profit or not for profit corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

CAPITAL IMPROVEMENT - Construction or an architectural service as defined herein.

CHANGE ORDER - A written order signed by the responsible Procurement Officer, directing a contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the contractor.

COLLABORATIVE AGREEMENT - Is a business agreement between the University and another party or parties, the primary purpose of which is other than the acquisition on the part of the University of goods and/or services.

COMMODITY - An item of purchase which may include office goods and materials, food, printing, building materials, and other items needed to support normal operations.

COMPETITIVE BIDDING - Bids or offers by individuals or vendors competing for a contract, privilege, or right to supply specified services or goods.

COMPETITIVE SEALED BID - A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids.

COMPETITIVE SEALED PROPOSALS - The procurement method to be used in those situations when competitive sealed bidding cannot be used because of the inability to prepare specifications that would permit an award based solely on price; or when it is impracticable or disadvantageous to the University.

COMPTROLLER - The Comptroller of the Treasury of the State.

CONSTRUCTION -

1. Construction means the process of building, altering, improving, or demolishing any structure, building, or other improvement to real property.
2. Construction **DOES NOT** include the maintenance or routine operation of an existing improvement to real property, or activities related to an energy performance contract.

CONSTRUCTION MANAGEMENT - A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

CONTRACT - An agreement entered into by a procurement agency for the for the acquisition of supplies, services, construction, architectural services, or engineering services.

CONTRACT ADMINISTRATION - The management of **all** facets of a contract to assure the vendor's total performance is in accordance with the contractual commitments and that the obligations of the vendor under the terms and conditions of the contract are fulfilled.

CONTRACTOR - Any person or business having a contract with the University System of Maryland or an institution thereof.

CONTRACT MODIFICATION- Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the contract. It includes change orders, extra work orders, supplemental agreements, contract amendments, or reinstatements.

COST ANALYSIS - An evaluation of the various cost elements (ie. overhead, labor, materials, profit, transportation, etc) which make-up the total price.

COST-PLUS-FIXED-FEE CONTRACT - A cost-reimbursement type contract that provides for the payment of a fixed fee to the vendor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT- A form of contract which provides for a fee or profit at a specified percentage of the vendor's actual cost of accomplishing the work.

COST -REIMBURSEMENT CONTRACT - A contract under which the University reimburses the contractor for those contract costs, within a stated ceiling, and a fee, if any, which are recognized as allowable and allocable under the cost and price principle regulations.

CURE NOTICE - A notice either oral or in writing that informs the vendor that he or she is in default and states what the vendor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

DAY - A calendar day unless otherwise designated.

DEBARMENT - An action taken by the State to exclude individuals or vendors from contracting with a public body for particular goods or services for specified periods of time.

DEFAULT - Failure of a contractor to comply with the terms and conditions of a contract.

DESIGN-BUILD CONTRACT- A contract between an institution and another party in which the party contracting with the institution agrees to both design and build the structure, roadway or other item specified in the contract. The term includes both sequential design and construction and phased design and construction methodologies.

DETERMINATION - A written procurement decision made by a public official or employee which is based upon written findings.

EMERGENCY - A sudden and unexpected occurrence or condition which agency management reasonably could not foresee that requires an action to avoid or to mitigate serious damage to public health, safety, or welfare.

ENERGY PERFORMANCE CONTRACT - An agreement for the provision of energy service, including electricity, heating, ventilation, cooling, steam, or hot water, in which a person agrees to design, install, finance through direct vendor financing and not by way of a municipal lease, maintain, or manage energy systems or equipment to improve the energy efficiency of a building or facility in exchange for a portion of the energy savings.

ENGINEERING SERVICES -

1. Engineering services are professional or creative work that is performed in connection with utilities, structures, buildings, machines, equipment, and processes, and that requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering Sciences.
2. Engineering services include consultation, investigation, evaluation, planning, design, and inspection of construction for the purpose of interpreting and assuring compliance with specifications and design within the scope of inspection services.
3. Engineering services do not include:
 - (a) the inspection of construction not requiring engineering training;
 - (b) services provided in connection with an energy performance contract.

EQUIVALENT ITEM - An item of equipment, material or supply, the quality, the design, or performance characteristics of which are functionally equal or superior to an item specified in a solicitation.

EVALUATED BID PRICE - The dollar amount of a bid after bid price adjustments are made under objectively measurable criteria.

EVALUATION OF BIDS - The process of examining a bid after opening to determine the bidder's responsiveness to requirements, responsibility, and other characteristics of the bid relating to selection for award.

EXTENSION - As applied to contracts for the performance of architect/engineer services, means a change in the scope of the services to be performed by the architect/engineer by including in the contract a requirement for the performance of phases of services not previously included.

FIXED PRICE CONTRACT - A contract which provides for a vendor price under which a vendor bears the full risk for profit or loss.

FUND AVAILABILITY - Monies that are currently credited to the USM or its constituent institutions and are contained within the proper object of expenditure.

INSPECTION - Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

INSTITUTION - A university, college, center, or other component of the University System of Maryland.

INVITATION FOR BIDS - Any documents, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and simplified procurement procedures.

INVOICE - A contractor's written request for payment for supplies, commodities, services, maintenance, construction, construction-related services, architectural services, or engineering services performed or provided.

LATE BID OR PROPOSAL - A bid or proposal which is received at the place designated in the invitation for bids or request for proposals after the deadline established by the solicitation.

LATENT DEFECT - A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specified materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

LEASE - A contract under which the University System of Maryland uses personal property to which it does not have title. Lease does not include lease-purchase or similar financing transactions.

LIQUIDATED DAMAGES - A monetary amount provided for in a solicitation or a contract to be paid by the contractor as damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency and not calculated simply to impose a penalty on the vendor.

MAINTENANCE - Any work necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, including built-in equipment or an in ground system, that is not included within the definition of construction.

MINOR IRREGULARITY - A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not materially affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured.

MINORITY BUSINESS ENTERPRISE - Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled.

MINORITY PERSON - A member of a socially or economically disadvantaged minority group, which for purposes of this title includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

MOST ADVANTAGEOUS - A proposal or offer received from a vendor that is determined to be most beneficial to the institution considering price and evaluation criteria set forth in the solicitation.

MOST FAVORABLE - A bid received from a vendor that is the lowest bid price or lowest evaluated bid price or the bid or evaluated bid that yields the greatest revenue under a revenue-producing procurement contract.

MULTIPLE AWARD - The award of contracts to more than one vendor when the terms and conditions of solicitation so provide.

MULTI-STEP SEALED BID - A multiple phase process in which bidders submit without price technical offers or samples, or both, to be evaluated by the Institution and an independent phase in which those bidders whose technical offers or samples, or both have been found to be acceptable have their price bids considered.

MULTI-YEAR CONTRACT - A contract that requires appropriations for more than 1 fiscal year.

NEGOTIATION - A bargaining process between two or more parties to reach a mutually satisfactory agreement, contract or settlement.

NON-COMPETITIVE NEGOTIATION - The process of arriving at an agreement through discussion and compromise with only one source.

NOTICE OF AWARD - A notification that a contract has been awarded.

NOTICE OF INTENT TO AWARD - A written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order. This decision may be changed prior to the actual award of a contract or purchase order.

OBJECTIVELY MEASURABLE CRITERIA - Standards, absent matters of opinion or subjective judgment, to compare the economy, effectiveness, or value of the subject of the solicitation and includes reliability, operational costs, maintainability, useful life, and residual value.

OPTION - The unilateral right of the University under a contract to extend the contract for an additional period of time, or to purchase delineated additional goods or labor, or to purchase materials or facilities that have been leased.

ORAL BIDS - Bids which are proposed by a means other than by writing.

PAYMENT BOND - A bond required of a vendor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract. Acceptable forms are those as found under **BID Security**.

PERFORMANCE BOND - A contract of guarantee executed in a predetermined amount subsequent to award to a contractor to protect the University from loss due to contractor's inability to complete the contract in accordance with its terms and conditions.

Acceptable forms include all those found under "Bid Security" and the grant of a mortgage or deed of trust on real property located within the State of Maryland when:

1. satisfactory to the Procurement Officer;
2. The face amount of the instrument does not exceed 75% of the contractor's equity interest in the property and;
3. the assignment of the mortgage or deed or trust is recorded in the county land records pursuant to real property article, Sec 3-103, Annotated Code of Maryland.

PERFORMANCE SPECIFICATION - Sets forth performance requirements that have been determined essential for the item or service being procured.

PERSON - Any individual, or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

PREBID OR PREPROPOSAL CONFERENCE - A meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical requirements, specifications, and standards relative to the proposed procurement.

PRE-QUALIFICATION - A procedure to pre-qualify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been pre-qualified.

1. Qualified Products List (QPL): A list of products that have been tested and approved based on written pre-qualification procedures.
2. Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written pre-qualification procedures.

PRICE ANALYSIS - An examination of a vendor's price by comparison to other prices for like goods or services or comparison to other price benchmarks.

PROCUREMENT - All functions that pertain to the process of buying, leasing as lessee, purchasing, or otherwise obtaining any supplies, services, construction, architectural services, engineering services, or services provided under an energy performance contract, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

PROCUREMENT AGENCY - Any principal department or independent unit of the Executive Branch of the State, not otherwise exempted from application of this title that is authorized by law or regulations to procure.

PROCUREMENT CONTRACT - An agreement in any form entered into by a unit for procurement.

PROCUREMENT OFFICER - Any person authorized by a procurement agency in accordance with law or regulations to formulate, enter into, or administer contracts or make-written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

PROPOSAL - The response to a request for proposals issued by a procurement agency to obtain goods or services.

PROPOSER - A person who submits a response to a request for proposals.

PROTEST - A complaint relating to the solicitation or award of a procurement contract.

PUBLIC BID OPENING - The process of publicly opening and reading bids.

PURCHASE - The act of buying or that which has been bought.

PURCHASE ORDER - A document issued by an Institution authorizing a procurement from a vendor. If issued in acceptance of a bid or proposal, the document is an "acceptance" and forms a contract upon issuance. If issued not in acceptance of a bid or proposal, a contract is formed upon acceptance by the vendor. Acceptance is evidenced by any reasonable manner in light of the circumstances including prompt shipment or prompt promise to ship or a definite expression or written confirmation sent by the vendor within a reasonable time.

QUOTATION - A bid.

REQUEST FOR BIDS - Invitation for bids.

REQUEST FOR PROPOSALS - Any document, whether attached or incorporated by reference, used for soliciting proposals from offerors under any method allowed under this title excluding competitive sealed bidding and comparable small procurement methods.

REQUEST FOR QUOTATION - Invitation for bids.

REQUIREMENTS CONTRACT - A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

RESEARCH GRANT- Funding from an external entity, either governmental or non-governmental, for a specific scope of work to be conducted in accordance within an approved budget and defined period of performance. Funding is made partially (if not entirely) on the qualifications of key personnel, including prospective sub-awardees. The award document is legally binding. A grant as defined here is not a contract for purposes of this document.

RESPONSIBLE - 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.

RESPONSIVE - 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.

SERVICE CONTRACT - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.

SERVICES - The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to, the professional, personal, and/or contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, appraisers, land surveyors, and where the service is associated with the provision of expertise or labor, or both.

SMALL BUSINESS - A business, other than a broker, which meets the following criteria:

1. an independently owned and operated;
2. not a subsidiary of another firm;
3. not dominant in its field of operation;
4. its wholesale operations did not employ more than 50 persons, and its gross sales did not exceed \$2,000,000 in its most recently completed fiscal year;

5. its retail operations did not employ more than 25 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year;
6. its manufacturing operations did not employ more than 100 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year;
7. its service operations did not employ more than 100 persons, and its gross sales did not exceed \$1,000,000 in its most recently completed fiscal year; and
8. its construction operations did not employ more than 50 persons, and its gross sales did not exceed \$4,000,000 in its most recently completed fiscal year.

SOLE SOURCE - When a competitive source selection method cannot be used because a product or service is practicably available only from one source.

SOLICITATION - Invitation for bids, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a procurement agency's procurement needs.

STATE AGENCY-

1. any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundation, fund, department, institute; institution, public corporation, service, trust, university, or other unit of the Executive Branch of the State government and includes any sub-unit within any of these units and
2. **does not** include bi-county, or multi-county, government agencies or political subdivisions of the State, including counties, municipalities, special tax districts, sanitary districts, drainage districts, soil conservation districts, water supply districts, and any entity organized under the general corporation laws of the State.

SUPPLIES - All tangible personal property, including equipment, leases of equipment, insurance, including necessarily associated services, and printing.

SYSTEM - The University System of Maryland.

TECHNICAL PROPOSAL - A proposal, not including price, which sets forth in detail that which a vendor proposes to furnish in response to a request for proposals.

TERMINATION FOR CONVENIENCE - The termination by a Procurement Officer, at his/her discretion, of the performance of work in whole or in part and makes settlement of the vendor's claims in accordance with appropriate policy and procedures.

TERMINATION FOR DEFAULT - Action taken by the Procurement Officer to order a vendor to cease work under the contract, in whole or in part, because of the vendor's failure to perform in accordance with the contract's terms and conditions.

TERMS AND CONDITIONS - Standard clauses and requirements incorporated into all solicitations and resulting contracts which are derived from laws or administrative procedures.

TIME AND MATERIAL CONTRACT - A contract providing for the procurement of materials at an agreed price or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit).

TREASURER - The Treasurer of the State of Maryland.

UNIVERSITY or UNIVERSITY OF MARYLAND - The University System of Maryland.

UNSEALED BID - An unsealed written offer conveyed by letter, telegraph or other means.

VENDOR - A person or business who desires to enter into a contract with the State.

VOUCHER - A claim for reimbursement of funds resulting from an expenditure related to official State business