

21.12.01.00

## **Title 21 STATE PROCUREMENT REGULATIONS**

### ***Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES***

#### **Chapter 01 General**

**Authority: State Finance and Procurement Article, §§13-304 and 13-310, Annotated Code of Maryland**

21.12.01.01

#### **.01 General.**

A. The selection of architects and engineers to provide design services for public improvements undertaken by the State is managed by the Department of Transportation for roads, highways, bridges, and certain other projects for which the Department of Transportation has responsibility, and by the Department of General Services for all other public improvements.

B. Two procedures for selecting architectural services and engineering services exist in both the Department of Transportation and the Department of General Services. COMAR 21.12.02 describes the method used by the Department of Transportation for selecting architectural services and engineering services for projects for which the architectural services or engineering services are estimated to cost over \$200,000. COMAR 21.12.03 describes the procedures for Department of Transportation projects with costs of \$200,000 or less. COMAR 21.12.04 describes the method used by the Department of General Services for selecting architectural services or engineering services for projects for which the architectural services or engineering services are estimated to cost over \$200,000. **COMAR 21.12.05 describes the procedures for Department of General Services projects with costs of \$200,000 or less.** The differences in the selection methodology relate to the basic differences in the types of projects undertaken by the two Departments.

21.12.01.9999

#### ***Administrative History***

**Effective date: July 1, 1981 (8:13 Md. R. II-5)**

**Regulation .01 amended effective May 10, 1982 (9:9 Md. R. 912)**

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**Regulation .01B amended effective January 9, 1989 (15:27 Md. R. 3138); May 26, 2003 (30:10 Md. R. 669)**

## **Title 21 STATE PROCUREMENT REGULATIONS**

### **Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES**

#### **Chapter 02 Department of Transportation; A/E Services Exceeding \$200,000**

#### **Authority: State Finance and Procurement Article, §13-304, Annotated Code of Maryland**

#### **.01 General.**

A. State Finance and Procurement Article, Title 13, Subtitle 3, Part XIV, Annotated Code of Maryland, establishes two Professional Services Selection Boards and specifies certain duties and criteria in selecting architects and engineers from whom professional services are procured. The two boards are the General Professional Services Selection Board, and the Transportation Professional Services Selection Board, after this referred to as the Transportation Board. It is the Transportation Board to which this chapter pertains.

B. Because of the complexity of the method for procuring architectural and engineering services, it is recognized that the Transportation Board will require augmentation. Accordingly, the Transportation Board shall be assisted by the Consultant Services Division (State Highway Administration), the consultant screening committees and negotiating teams of various transportation agencies, transportation agencies' staffs, and an executive secretary appointed by the Secretary of Transportation.

C. Definitions.

(1) "Architectural and engineering services" means architectural services, engineering services, or both.

(2) Architectural Services.

(a) "Architectural services" means 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.

(b) "Architectural services" includes 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.

(c) "Architectural services" does not include construction inspection services.

(2) Engineering Services.

(a) "Engineering services" means 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.

(b) "Engineering services" includes 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.

D. The following are not subject to this chapter:

- (1) Professional services rendered through various State agencies and local jurisdictions;
- (2) Research and development projects; or
- (3) Management services not related to architectural and engineering projects.

*21.12.02.02*

### **.02 Applicability.**

A. This chapter applies to the selection of consultants for procurement of architectural and engineering services in excess of \$200,000.

B. Procedures relating to the development of various contracts and agreements are not included here. The Division of Consultant Services shall assist, as required, transportation agencies in processing contracts and agreements.

*21.12.02.03*

### **.03 Duties of the Transportation Board.**

The duties of the Transportation Board are as follows:

A. To exercise its powers and responsibilities pursuant to State Finance and Procurement Article, Title 13, Subtitle 3, Annotated Code of Maryland;

B. To receive certifications from the Secretary of Transportation concerning the need for processing architectural and engineering services;

C. To review recommendations from transportation agencies for proposed consultant service selections, render decisions with respect to those recommendations, certify to the Board that the selections were made in accordance with law and these regulations, and recommend to the Board that contracts be awarded to those selected; and

D. To amend these regulations as necessary.

*21.12.02.04*

### **.04 Membership of the Transportation Board.**

The Transportation Board is a part of the Department of Transportation and consists of four permanent members and one temporary member as follows:

A. The Secretary of Transportation, or his designee, as an ex-officio member;

B. One member, and his alternate, chosen by the Governor and serving at the pleasure of the Governor, from within the Department of Transportation upon the recommendation of the Secretary of Transportation;

C. Two members chosen by the Governor from the general public, at least one of whom may not be an engineer or architect, and who shall serve for a term of 5 years;

D. The temporary member is the head of the transportation agency, or his designee, which is recommending a selection to the Board.

*21.12.02.05*

### **.05 Voting Powers.**

The following Transportation Board members shall have voting powers:

- A. The Secretary of Transportation, or his designee;
- B. The permanent member, or his alternate from within the Department of Transportation;
- C. The two permanent members from the general public;
- D. Each temporary member, but only in regard to his transportation agency's recommended selection to the Transportation Board.

*21.12.02.06*

### **.06 Vacancies.**

Vacancies in the membership of the Transportation Board shall be filled, for the unexpired term (if applicable), by appointment of the Governor.

*21.12.02.07*

### **.07 Restrictions on Participation.**

- A. A member of the Transportation Board may not participate with respect to a matter coming before the Transportation Board in which the member has had an interest within the last 12 months.
- B. Interest means personal involvement with issues, individuals, firms, corporations, partnerships, associations, or institutions through which Transportation Board action might result in the member's personal benefit or detriment.

*21.12.02.08*

### **.08 Meetings.**

- A. Frequency. The Transportation Board shall be scheduled to meet regularly on a monthly basis, and additionally as determined necessary by the Chairman. All meetings of the Transportation Board for which public announcements are required shall be open to the public.
- B. Quorum. The presence of three members at a Transportation Board meeting constitutes a quorum, providing that one of the members is a public member. Since attendance by at least one public member is essential to action by the Transportation Board, the two public members shall be responsible for seeing that at least one will be present at each meeting.
- C. Passage of Motions. The passage of a motion requires three affirmative votes, at least one of which shall be cast by a public member.
- D. Agenda. An agenda of the Transportation Board shall include, as required, provisions for:
  - (1) Presentation of briefs by any consultants in accordance with Regulation .11D(2)(b) and H(2)(b);
  - (2) Transportation Board action on selections;

(3) Transportation Board action on certifications for the need for consultants in accordance with Regulation .09 of this chapter;

(4) Transportation Board action on waivers;

(5) Other business.

E. Minutes. The Executive Secretary shall record and preserve minutes of all Transportation Board proceedings. Copies shall be distributed to all members of the Transportation Board, including any temporary members whose business before the Transportation Board is reflected in the minutes, and to the Consultant Services Division.

F. Records. All records of the Transportation Board, including meeting minutes, and all documents relating to selections are public records and are open to inspection by the public, except as otherwise provided by the State Government Article, Title 10, Subtitle 6, Part III, Annotated Code of Maryland.

*21.12.02.09*

### **.09 Request for Procurement of Services.**

A. A transportation agency desiring to procure architectural or engineering services costing over \$200,000 shall submit to the Secretary of Transportation documentation to support its position that the services cannot be provided feasibly or economically by existing in-house resources.

B. The Secretary of Transportation shall review this request, and if acceptable, certify to the Transportation Board that the services cannot be provided by existing in-house resources. A copy of the Secretary's certification shall be sent to the requesting transportation agency and to the Consultant Services Division.

C. The Transportation Board shall note, for the record, the certified requests received from the Secretary of Transportation.

D. After receipt of the Secretary's certification, the transportation agency requesting the services shall prepare a description of the project and a comprehensive scope of the services required. The scope of services shall be completed before the solicitation of interests for the procurement of services, unless otherwise directed by the transportation agency head.

*21.12.02.10*

### **.10 Solicitation of Interest.**

A. After receipt of the Secretary's certification, the Consultant Services Division, using text prepared by the transportation agency requesting the services, shall place public announcements in the Maryland Contract Weekly, Daily Record, or other appropriate publications in the name of the Transportation Board, indicating that the request to procure architectural and engineering services has been certified by the Secretary of Transportation.

B. Public announcement guidelines are as follows:

(1) Generally, public announcements shall be placed for a specific project. However, to the extent practical and feasible, as determined by the transportation agency requesting the services, two or more projects which are similar in nature and scope of services may be included in a single public announcement, and multiple reduced candidate lists established from those responding to the announcement.

(2) In some cases, the transportation agency may desire to award two or more open-end contracts which are identical in nature and scope of services, for work to be performed in the same defined geographical area. In these cases, the public announcement shall indicate that two or more contracts may be awarded from a single reduced candidate list.

C. The public announcements shall contain at least the following:

- (1) Transportation agency's name.
- (2) Project number.
- (3) Description of the project, and the architectural or engineering service to be procured.
- (4) A statement requiring from respondents indication of the prime participant or participants, and the areas of involvement of each named subcontractor. This statement shall further advise respondents that if they are placed on the reduced candidate list, their submission of proposals should substantially reflect this same composition and areas of involvement.
- (5) Indication that reduced candidate lists shall consist of two or more firms from whom technical proposals shall be requested, and that contract negotiations shall be conducted with the firm which submits the highest rated technical proposal.
- (6) Indication that multiple reduced candidate lists may be established for two or more projects similar in nature and scope of services.
- (7) Indication that a single reduced candidate list may be established for two or more identical open-end contracts, as described in §B(2).
- (8) Indication of:
  - (a) Specific requirements, as a prerequisite for consideration; and
  - (b) The major factors/criteria for the establishment of a reduced candidate list.
- (9) Indication how interested firms may receive additional documentation about the procurement, if available.
- (10) Provision of a minimum of 15 days from the date of announcement for response by interested firms.

D. The Consultant Services Division shall mail copies of the announcement to the transportation agency for which the services are being sought.

*21.12.02.11*

## **.11 Selection Procedure.**

A. Candidate List. The Consultant Services Division shall establish a list of all persons who have responded to the solicitation of interest and shall send the list to the requesting transportation agency.

B. Qualification Criteria. Beyond the specific criteria to be applied to individual projects, general qualification criteria to be evaluated for each respondent firm shall include, but not be limited to, the following:

- (1) General competence;
- (2) Past performance on State work or similar work;
- (3) Compatibility of the size of the firm with the size of the proposed project;
- (4) Capacity to accomplish the proposed work in the required time;
- (5) Financial responsibility;
- (6) Measures of protection for the State against errors and omissions.

C. Reduced Candidate List. The requesting transportation agency's consultant screening committee shall evaluate the candidate list, and, by applying uniform criteria, establish a reduced candidate list composed of two or more candidates.

D. Notification to Solicitation of Interest Respondents.

(1) The requesting transportation agency's consultant screening committee shall immediately notify the candidates on the reduced candidate list that they have qualified and can anticipate a request for technical proposals.

(2) The requesting transportation agency's consultant screening committee shall immediately notify the candidates not on the reduced candidate list that they have not qualified and inform them of their rights as follows:

(a) A candidate not on the reduced candidate list is entitled to a meeting with a representative designated by the consultant screening committee to discuss the non-qualification. The request for a meeting shall be written and shall be received by the consultant screening committee within 7 days of the candidate receiving notice.

(b) A candidate still dissatisfied after the meeting with the consultant screening committee's designee is entitled to appear before the Transportation Board. The request to appear before the Transportation Board shall be written and shall contain or consist of a brief which details the candidate's objections. The request shall be received by the consultant screening committee within 7 days of the meeting held in accordance with §D(2)(a) of this regulation. The consultant screening committee shall transmit the request to the Transportation Board for placement on its agenda.

E. Request for Technical Proposals.

(1) Upon establishment of a reduced candidate list in accordance with §C of this regulation, the requesting transportation agency shall:

(a) Forward the reduced candidate list to the Consultant Services Division; and

(b) Prepare and forward to the Consultant Services Division a request for technical proposals package, including a description of the project and a comprehensive scope of the services required, major factors/criteria to be used in evaluating proposals, and any other transportation agency requirements.

(2) Upon receipt of the reduced candidate list and the request for technical proposals package, the Consultant Services Division shall send a request for technical proposals to each candidate on the reduced candidate list. The request for proposals shall state that the transportation agency shall conduct contract negotiations with the firm which submits the highest rated technical proposal as provided for in §I of this regulation.

F. Pre-Proposal Meeting. At the time the request for proposals is sent out, a date shall be designated for a pre-proposal meeting, if deemed necessary by the transportation agency.

G. Technical Proposal Evaluation and Recommendation.

(1) The requesting transportation agency's consultant screening committee shall do the following:

(a) Review the technical proposals for consistency with the statement submitted by each firm pursuant to Regulation .10B(4). Substantial modification in either composition or areas of involvement from that shown in the firm's statement is grounds for disqualification of the proposal. However, upon a showing of compelling justification, the consultant screening committee may accept the proposal, as modified, if this is determined, in the committee's discretion, as necessary. This determination shall be made as soon as practicable on the basis of the justification submitted by the firm.

(b) Evaluate the technical proposals received in response to the request for proposals.

(c) Make recommendations, based on the steps above, for selection in ranked order to the head of the transportation agency.

(2) The head of the requesting transportation agency shall either concur with the recommendations of the consultant screening committee or in the event of non-concurrence, shall document his reasons for non-concurrence and request reconsideration of the recommendations by the consultant screening committee.

(3) After the concurrence with the consulting screening committee recommendations by the head of the transportation agency, the agency shall proceed with contract negotiations with the top-ranked firm.

#### H. Notification to Respondents.

(1) The transportation agency shall immediately notify the top-ranked consultant and explain what subsequent actions are to be taken.

(2) The transportation agency shall immediately notify the other consultants and inform them of their ranking and their rights as follows:

(a) A consultant not top-ranked for selection is entitled to a meeting with a member designated by the consultant screening committee to discuss his status. The request for a meeting shall be written and must be received by the consultant screening committee within 7 days of the consultant receiving notice.

(b) A consultant still dissatisfied after the meeting with the consultant screening committee's designee is entitled to appear before the Transportation Board. The request to appear before the Transportation Board shall be written and shall contain or consist of a brief which details the consultant's objections. The request shall be received by the consultant screening committee within 7 days of the meeting held in accordance with §H(2)(a). The consultant screening committee shall transmit the request to the Transportation Board for placement on its agenda.

#### I. Contract Negotiations.

(1) Under the provisions of State Finance and Procurement Article, §13-311(d), Annotated Code of Maryland, the Transportation Board delegates the contract negotiation process to the transportation agency.

(2) A negotiating team shall be designated by the transportation agency for the purpose of conducting contract negotiations.

(3) Contract negotiations shall be initiated as follows:

(a) The transportation agency, through the negotiating team, shall initiate contract negotiations with the firm which the transportation agency's consultant screening committee has ranked highest based on the evaluation of the technical proposals.

(b) In those cases where the transportation agency desires to award two or more identical open-end contracts, as described in Regulation .10B(2), negotiations may be conducted simultaneously with two or more of the firms which have submitted the highest rated technical proposals.

(4) The transportation agency shall determine that the negotiated price and all rates to be paid under the contract are fair, competitive, and reasonable. In making that determination, the transportation agency shall:

(a) Consider the scope and complexity of the professional services required; and

(b) Conduct a detailed analysis of the cost of the services.

(5) In cases of unsuccessful negotiations, the transportation agency shall act as follows:

(a) If the transportation agency is unable to negotiate a satisfactory contract with the highest ranked firm at a price which it determines to be fair, competitive, and reasonable, the transportation agency, with the

approval of the agency head, shall terminate negotiations with that firm. The transportation agency then shall negotiate with the second-ranked firm in the same manner. If agreement cannot be reached with the second-ranked firm, the transportation agency shall negotiate with other ranked firms, consecutively in their order of ranking.

(b) In those cases when simultaneous negotiations are being conducted with two or more firms for the awarding of identical open-end contracts, and the transportation agency is unable to negotiate a satisfactory contract with any of the highest ranked firms, the transportation agency then shall negotiate with other ranked firms, consecutively in their order of ranking.

(6) If the transportation agency is unable to negotiate a satisfactory contract with any of the firms selected and ranked by the consultant screening committee, the agency head shall request the:

(a) Consultant screening committee to make recommendations for the selection of additional firms, in ranked order; and

(b) Negotiating team to continue negotiations in accordance with this section until a satisfactory agreement is reached.

(7) The negotiating team shall submit its recommendations to the head of the transportation agency for concurrence.

J. Recommendation to the Transportation Board. The head of the transportation agency shall submit the recommendations of the agency's consultant screening committee and negotiating team, with indication of his concurrence, to the Transportation Board, along with the documentation for the selection.

*21.12.02.12*

## **.12 Transportation Board Action on Selection.**

A. Public Announcement of Meeting. The Executive Secretary of the Transportation Board shall place public announcements in the Maryland Register, Daily Record, or other appropriate publications. The announcements shall be published at least 5 days before the meeting, shall contain descriptions of projects and actions to be taken by the Transportation Board, and shall show the date, time, and place of the meeting.

B. The Transportation Board shall review the transportation agencies' recommendations, procedures, and proposed contract documents, and render an immediate decision to select the recommended consultant, postpone for cause, or reject the recommendations and indicate remedial processing.

C. Certification of Selection Action. The Transportation Board shall submit to the Board a certification of each selection to include the project number and description, the name of the selected consultant, the reasons for the selection, the project cost, and an assurance that the selected consultant has the financial capacity to perform the required services.

*21.12.02.13*

## **.13 Compensation for Services.**

A. Unacceptable Methods. The following methods of compensation are not acceptable:

(1) Cost plus a percentage of cost;

(2) Percentage of construction cost.

B. The determination of the method of compensation shall be made by the requesting transportation agency.

C. Prices shall be negotiated in accordance with State Finance and Procurement Article, §13-311(b), Annotated Code of Maryland.

D. Audit. The requesting transportation agency shall arrange for pre-audits and post-audits, as required. All rates used in cost-plus-fixed-fee compensations shall be verified.

E. Monitoring.

(1) A follow-up monitoring system to fairly evaluate the consultant's performance shall be initiated by the requesting transportation agency. As a minimum, this shall include an evaluation of quality of work, timeliness of completion, effectiveness, and responsiveness to the agency's needs.

(2) The Consultant Services Division shall maintain a post-evaluation file for each firm performing work for any transportation agency. Copies of these evaluations shall be furnished to the consultant screening committees and shall be considered in performing their evaluations.

*21.12.02.14*

## **.14 Waiver of Selection on a Competitive Basis.**

A. Waiver Criteria. Pursuant to State Finance and Procurement Article, §13-314, the Transportation Board shall waive selection on a competitive basis in writing under any of the following conditions:

- (1) When the public health and safety is endangered following any natural disaster or Act of God;
- (2) When a state of emergency is declared by the Governor;
- (3) When it determines that a bona fide single source of services, supply, or proprietary product or process is required, as determined by the Transportation Board;
- (4) When the Transportation Board determines that the services cannot be so completely defined as to lend themselves to procedures for selection on a competitive basis;
- (5) When a project of a complex nature carried out in phases makes it not feasible to continue subsequent phases with other than the first phase source, as determined by the Board;
- (6) When, upon recommendation by the Secretary of Transportation, and accompanied by a finding by the Governor of extraordinary circumstances, the Board of Public Works determines that urgent circumstances require prompt action and that the selection of an architectural-engineering firm for a particular project be made on an expedited basis, that an expedited selection best serves the public interest, and that the need for the expedited selection outweighs the benefits of making a selection on a competitive basis.

B. Procedure for Waiver Action.

(1) If the Transportation Board waives selection on a competitive basis, in writing, in emergency situations described in §A(1) or (2), the transportation agency involved may act immediately. Upon taking action, the agency shall notify the Transportation Board in writing.

(2) Waivers described in §A(3), (4), and (5) shall be requested by the head of the involved transportation agency after consultation with the requesting agency's consultant screening committee and through the Bureau of Consultant Services. The requirements of Regulation .09 are not waived.

(3) Waivers described in §A(6) shall be granted pursuant to the action taken by the Board of Public Works.

(4) Transportation Board action on waivers shall be taken at a public meeting held in accordance with Regulations .08 and .12. The requirement in Regulation .12 that announcements be made at least 5 days before the meeting does not apply to waivers described in §A(1) and (2). However, reasonable notice shall be made in an appropriate publication.

C. Documentation of Waiver Action. All waivers granted by the Transportation Board shall be reported to the Legislative Policy Committee within 30 days and published in the next available issue of the Maryland Register.

21.12.02.9999

### *Administrative History*

**Effective date: July 1, 1981 (8:13 Md. R. II-5)**

Regulations .01A, .02A, .04C, and .09A amended as emergency provisions effective July 1, 1981 (8:13 Md. R. II-3); emergency status expired October 1, 1981 (Emergency provisions are temporary and not printed in COMAR)

Regulations .01A, .02A, .04C, and .09A amended effective May 10, 1982 (9:9 Md. R. 912)

Regulations .01A, B; .02A; .03A; .08F; .09A; .10C; .11; .12B;.13C; and .14A amended effective April 1, 1986 (13:3 Md. R. 273)

Regulations .01—.03, .08, .11, .13, and .14 amended effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .01B amended effective May 26, 2003 (30:10 Md. R. 669)

Regulation .01C amended effective September 26, 1983 (10:19 Md. R. 1696)

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Regulation .08A amended effective April 8, 1985 (12:7 Md. R. 708)

Regulation .09A amended effective May 26, 2003 (30:10 Md. R. 669)

Regulation .09D adopted effective April 8, 1985 (12:7 Md. R. 708)

Regulation .10 amended effective April 8, 1985 (12:7 Md. R. 708)

Regulation .10A amended effective September 26, 1983 (10:19 Md. R. 1696)

Regulation .10B, C and .11I amended effective April 6, 1987 (14:7 Md. R. 834)

Regulation .11D, G amended effective December 25, 2000 (27:25 Md. R. 2284)

Regulation .11E amended effective April 8, 1985 (12:7 Md. R. 708)

Regulation .12A amended effective September 26, 1983 (10:19 Md. R. 1696)

Regulation .14A, B amended effective December 1, 1986 (13:24 Md. R. 2562)

21.12.03.00

## **Title 21 STATE PROCUREMENT REGULATIONS**

### ***Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES***

#### **Chapter 03 Department of Transportation A/E Services, \$200,000 or Less**

**Authority: State Finance and Procurement Article, §§13-304 and 13-310, Annotated Code of Maryland**

21.12.03.01

#### **.01 General.**

Architectural and engineering services contracts costing \$200,000 or less awarded through the Department of Transportation result from solicitations and negotiations conducted by the transportation agency requiring the services. A list of candidate firms, consisting of two or more firms qualified to perform the services, is established by staff within the transportation agency. The firms on the candidate list are requested to submit technical proposals for the requested services. The proposals are evaluated by staff within the transportation agency and a recommendation for selection is made to the transportation agency head. A contract for the requested services is then negotiated with the selected firm subject to review and approval by the transportation agency head.

21.12.03.9999

#### ***Administrative History***

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21.12.04.00

## **Title 21 STATE PROCUREMENT REGULATIONS**

### ***Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES***

#### **Chapter 04 Department of General Services; A/E Services Exceeding \$200,000**

**Authority: State Finance and Procurement Article, §§13-304 and 13-314, Annotated Code of Maryland**

21.12.04.01

#### **.01 General.**

A. The State Finance and Procurement Article, Title 13, Subtitle 3, Annotated Code of Maryland, establishes two Professional Services Selection Boards and specifies certain duties and criteria in selecting architects and engineers from whom professional services valued in excess of \$200,000 are procured. The two Boards are the General Professional Services Selection Board (after this termed the General Board), and the Transportation Professional Services Selection Board. It is the General Board to which these regulations and procedures pertain.

B. Because of the complexity of the method for procuring architectural services and engineering services, it is recognized that the General Board will require augmentation. Accordingly, the General Board shall be assisted by a Qualification Committee, a Negotiation Committee, various using agencies, and an administrator appointed by the Secretary of General Services.

21.12.04.02

#### **.02 Applicability and Definitions.**

A. Applicability.

(1) This chapter is issued by the General Board for the procurement and award of contracts, consultant agreements, or other obligations in excess of \$200,000 for architectural services or engineering services.

(2) The \$200,000 minimum limitation applies to the architectural/engineering fee for a complete project including:

- (a) Preliminary and schematics phase;
- (b) Design development phase;
- (c) Contract document phase;
- (d) Bidding phase;
- (e) Construction phase; and
- (f) Post-construction phase.

(3) For an indefinite quantity contract, the \$200,000 minimum limitation applies to the total fees payable to a single firm under a single indefinite quantity contract.

B. Architectural/Engineering Services Defined. For the purposes of these regulations, architectural services and engineering services are defined as follows:

(1) "Architectural services" means professional or creative work in connection with the design and supervision of construction or alteration of a building or its parts, requiring architectural education, training, and experience in consultation, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, electrical engineers, and other consultants.

(2) "Engineering services" means professional or creative work in connection with public or private utilities, structures, buildings, machines, equipment and processes for projects requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design.

(3) "Landscape architect services" means professional or creative work such as consultation, investigation, research, planning, design, and preparation of drawings and specifications. "Landscape architect services" may also mean responsible supervision of the development of land areas when the objective is to preserve, enhance, or determine the following:

(a) Proper land uses;

(b) Natural land features;

(c) Planting;

(d) Natural and aesthetic values;

(e) Settings and approaches to structure or other improvements;

(f) Settings of grades and determining drainage;

(g) Providing for storm drainage systems when these systems do not require the hydraulic design, structural design, or system components and are restricted to the use, when relevant, of any standards prescribed by local or State authorities; and

(h) Determination of environmental problems of land, including erosion, blight, and other hazards.

C. Exceptions. The following are not subject to this chapter:

(1) Professional services rendered through various State agencies and local jurisdictions;

(2) Research and development projects;

(3) Management services not related to architectural or engineering projects; or

(4) Construction inspection services, provided that these services have been obtained in accordance with the appropriate source selection processes in COMAR 21.05.

D. "Administrator" means the Administrator of the General Board.

E. "Department" means the Department of General Services.

F. "Secretary" means the Secretary of General Services or the designee of the Secretary.

21.12.04.03

### **.03 Membership of the Board.**

The General Board is in the Department of General Services and consists of four permanent members and one temporary member as follows:

- A. The Secretary of General Services or designee, as an ex-officio member;
- B. One member, and an alternate member, chosen by the Governor and serving at the pleasure of the Governor, from within the Department of General Services and upon the recommendation of the Secretary of General Services;
- C. Two members chosen by the Governor from the general public, not more than one of whom may be an engineer or architect, and who shall serve for a term of 5 years;
- D. The temporary member is the head of the using agency or designee, which is recommending a selection to the General Board.

21.12.04.04

### **.04 Voting Powers.**

The following General Board members shall have voting powers:

- A. The Secretary of General Services or designee;
- B. The permanent member from within the Department of General Services;
- C. The two permanent members from the general public; and
- D. Each temporary member, but only in consideration of matters relating to the using agency's projects.

21.12.04.05

### **.05 Vacancies.**

Vacancies in the membership of the General Board shall be filled for the unexpired term, if applicable, by appointment by the Governor.

21.12.04.06

### **.06 Restrictions on Participation.**

- A. A member of the General Board may not participate in matters before the General Board in which the member has had an interest within the last 12 months.
- B. "Interest" means personal involvement with issues, individuals, firms, corporations, partnerships, associations, or institutions through which General Board action might result in the member's personal benefit or detriment.

21.12.04.07

### **.07 Meetings.**

A. Frequency. The General Board shall meet at regular times and places and in special meetings as necessary. Meetings of the General Board for which public announcements are required shall be open to the public.

B. Quorum. Three members at a General Board meeting constitute a quorum, provided that one of the members is a public member. Since attendance by at least one public member is essential to action by the General Board, the two public members shall be responsible for seeing that at least one will be present at each meeting.

C. Passage of Motions. The passage of a motion requires three affirmative votes, at least one of which shall have been cast by a public member.

D. Minutes. The Administrator shall record and preserve minutes of all General Board proceedings.

E. Records. Records of the General Board, including meeting minutes, are public records and are open to inspection by the public, except as otherwise provided by State Government Article, Title 10, Subtitle 6, Part III, Annotated Code of Maryland.

*21.12.04.08*

### **.08 Waivers.**

A. Waiver Criteria. Pursuant to State Finance and Procurement Article, §13-314, Annotated Code of Maryland, the General Board may waive selection under these regulations under the following conditions:

- (1) When the public health and safety is endangered following any natural disaster or Act of God;
- (2) When a state of emergency is declared by the Governor;
- (3) When a bona fide single source of services, supply, or proprietary product or process is required, as determined by the General Board;
- (4) When the General Board determines in writing that the architectural services and engineering services cannot be defined so completely so as to lend themselves to the procedures set forth;
- (5) Upon the recommendation of the Secretary of General Services, accompanied by a finding of the Governor of extraordinary circumstances, the Board of Public Works determines that urgent circumstances require prompt action and that the selection of an architectural/engineering firm for a particular project be made on an expedited basis, that an expedited selection best serves the public interest, and that the need for the expedited selection outweighs the benefits of making a selection under State Finance and Procurement Article, §§13-304(b) and 13-308, Annotated Code of Maryland;

B. Procedure for Waivers. If the General Board waives selection under these regulations, the waivers shall be made in writing. The following apply:

- (1) In emergency situations described in §A(1) or (2) of this regulation, the using agency involved and the Secretary of General Services may act immediately. Upon taking action, the using agency shall notify the General Board in writing.
- (2) Waivers described in §A(3) of this regulation shall be requested by the using agency and shall be presented to the General Board by the using agency.
- (3) General Board action on waivers described in §B(2) of this regulation shall be taken at public meetings held in accordance with Regulations .09 and .12 of this chapter. Notice of waivers pursuant to §A(1) and (2) of this regulation shall be made in appropriate publications.

C. Documentation of Waivers. Waivers granted by the General Board shall be reported to the Legislative Policy Committee within 30 days and published in the next available issue of the Contract Weekly.

21.12.04.09

## **.09 Request for Procurement of Services.**

A. A using agency desiring to procure architectural services or engineering services through the General Board shall submit to the Secretary the following:

- (1) A comprehensive program for the project which sets forth all information necessary to design the proposed improvement. This program shall have been first forwarded to the Office of Planning for review.
- (2) Documentation to support its position that the services cannot be provided feasibly or economically by resources existing within the using agency.

B. Review of Request.

- (1) The Secretary shall review each request from a using agency for services and determine whether or not the request is acceptable.
- (2) If the Secretary determines that the request is acceptable and that it is in the best interest of the State for the services requested to be furnished under an indefinite quantity contract, the Secretary may proceed under this chapter to obtain the services under the appropriate contract.
- (3) If the Secretary determines that the request is acceptable and that it is in the best interest of the State for the services not to be obtained under an indefinite quantity contract, the Secretary shall certify to the General Board that the program has been approved and the services cannot be provided by resources existing within the Department. A copy of the Secretary's certification shall be sent to the using agency and to the Administrator.

C. If the Secretary determines that it is in the State's best interest to procure an indefinite quantity contract for architectural or engineering services, the Secretary shall certify to the General Board that the need for an indefinite quantity contract exists and the services cannot be provided by resources existing within the Department.

D. The General Board shall note, for the record, the certified requests received from the Secretary.

21.12.04.10

## **.10 Solicitation of Interest for Individual Projects.**

A. Applicability. This regulation applies to the procurement of architectural and engineering services for individual projects.

B. Public Announcements.

- (1) After receipt of the Secretary's certification, the Administrator shall place announcements in the Maryland Contract Weekly and other appropriate publications in the name of the General Board, indicating that the request to procure architectural services and engineering services has been certified by the Secretary.
- (2) Public announcements shall contain the following:
  - (a) Using agency's name;
  - (b) Project number and name;
  - (c) Description of the project;
  - (d) A statement to the architectural services or engineering services to be procured;

- (e) Estimate of project cost; and
  - (f) The due date for response by interested firms.
- (3) The Administrator shall mail copies of the announcement to the using agency requesting the services.

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form 254, Architect/Engineer and Related Services Questionnaire (SF-254), that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation, the following:

(a) A copy of the list of all architectural/engineering firms that have expressed interest in the project and have met the requirements of §C(1) of this regulation;

(b) A request for U.S. Government Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project (SF-255).

(c) A request that each respondent identify the prime participant or participants, and the areas of involvement of each. This statement shall further advise respondents that if awarded the contract, the contract shall require the assignment of these same participants to the project.

(d) Guidelines for the submission of qualifications and technical proposals.

(e) A complete copy of the uniform criteria to be used by the Qualification Committee to rank the submissions.

(f) The due date for the submission of qualifications and technical proposals.

*21.12.04.10-1*

## **.10-1 Solicitation of Interest for Indefinite Quantity Contracts.**

A. Applicability. This regulation applies to the procurement of architectural and engineering services of indefinite quantity or scope covering multiple projects.

B. Public Announcements.

(1) The Secretary may certify to the General Board that there exists a need to procure contracts for architectural or engineering services of indefinite quantity or scope which may cover multiple projects.

(2) Upon receipt of a certification by the Secretary under §B(1) of this regulation, the General Board shall:

(a) Approve the request subject to any restrictions or requirements imposed by the General Board under Regulation .13-4A of this chapter; or

(b) Disapprove the request.

(3) After approval by the General Board of the certification, the Administrator shall place announcements in the Maryland Contract Weekly and other appropriate publications in the name of the General Board indicating that the Secretary has certified the need to procure architectural and engineering services under indefinite quantity contracts.

(4) Public announcements shall also contain the following:

- (a) A description of the disciplines or types of architectural or engineering services needed;
- (b) A description of the types of projects for which work might be assigned under the indefinite quantity contract;
- (c) The maximum compensation payable for any individual project and for the aggregate of projects for which services may be provided;
- (d) A statement that contracts awarded under the solicitation will be for services of indefinite quantity or scope and may cover multiple projects;
- (e) A statement that multiple awards may be made; and
- (f) The due date for response by interested firms.

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form 254, Architect/Engineer and Related Services Questionnaire (SF-254), that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation the following:

- (a) A copy of the list of all architectural/engineering firms that have expressed interest in the project and have met the requirements of §C(1) of this regulation;
- (b) A request for U.S. Government Standard Form 255, Architect/Engineer and Related Services Questionnaire for Specific Project (SF-255);
- (c) A request that each respondent identify the prime participant or participants and the areas of involvement of each, which request shall further advise respondents that if awarded the contract, the contract shall require the assignment of these same participants to the project;
- (d) Guidelines for the submission of qualifications and technical proposals;
- (e) A complete copy of the uniform criteria to be used by the Qualification Committee to rank the submissions; and
- (f) The due date for the submission of qualifications and technical proposals.

D. Negotiations for indefinite quantity contracts may be conducted with multiple firms, on the basis of fixed rates or fees, and multiple awards may be made.

*21.12.04.11*

## **.11 Qualification Committee.**

The Qualification Committee shall be composed of senior registered architects, engineers, or landscape architects from within the Department appointed by the Secretary. One or more representatives of the appropriate using agency shall also be members of this Committee. The Secretary shall determine the number of using agency representatives on the Committee.

*21.12.04.12*

## **.12 Selection Procedure.**

A. Candidate List. The Administrator shall prepare a list of all architectural/engineering firms having responded to the request for qualifications and technical proposals and shall send this list to the Qualification Committee and, in the case of an individual project, to the using agency.

B. Ranking of Candidates.

(1) The Qualification Committee shall evaluate each architectural/engineering firm responding to the request for qualifications and technical proposals. This evaluation shall be based upon the following criteria:

- (a) General competence (individual technical consultants);
- (b) Geographic location;
- (c) Past performance on State work or similar work especially with regard to errors, omissions, adherence to budget and schedule limitations;
- (d) Compatibility of the size of the firm with the size of the proposed project;
- (e) Firm's current total workload and capacity to accomplish the proposed work in the required time;
- (f) Understanding the project and the program;
- (g) Special experience, design approach, or other special qualifications;
- (h) Originality and quality of design in previous work (at the discretion of the Qualification Committee);
- (i) Architect/engineer's financial responsibility; and
- (j) Measures of protection for the State against errors and omissions.

(2) Based upon its evaluation, the Qualification Committee shall prepare a report ranking all architectural/engineering firms which have been evaluated.

C. Preliminary Selection of Architect/Engineer.

(1) The Qualification Committee shall submit the report ranking the candidates to the Secretary for action. Only those firms receiving an evaluation rating of not less than 85 percent of the maximum attainable shall be eligible for further consideration.

(2) After reviewing the Qualification Committee's report, the Secretary shall:

- (a) Present the Qualification Committee's rankings to the GPSSB for approval; or
- (b) Refer the firms eligible for further consideration to a second-phase review panel.

(3) The Secretary may determine before publication of the solicitation of interest that a second-phase evaluation is in the State's best interest. If that determination is made, the Request for Qualifications and Technical Proposals shall indicate that the selection process will involve evaluation by a second-phase review panel.

(4) In selecting the course of action to be followed under §C(2) of this regulation, the Secretary shall consider the Qualification Committee's evaluations and scores, nature and scope of the project, the dollar value of the project, and other matters deemed pertinent by the Secretary.

(5) In making a determination under §C(3) of this regulation, the Secretary shall consider the nature and scope of the project, the dollar value of the project, and other matters deemed pertinent by the Secretary.

(6) The Secretary's decision under §C(2) or (3) of this regulation and the basis for the decision shall be in writing.

(7) A second-phase review panel shall consist of the Qualification Committee Chairman or the Secretary's designee, a representative of the using agency, and a senior licensed architect, engineer, or landscape architect of the Department.

(8) The second-phase review panel shall conduct one or more of the following:

(a) Additional non-numeric evaluations of each candidate's qualifications and supplemental written information requested by the panel;

(b) Interviews, in person or by telephone, to provide responses to questions of the panel; or

(c) Oral presentations by the full prospective design team to review its understanding of the program, proposed design concepts, and management plan.

(9) The second-phase review panel shall evaluate each candidate firm on the following criteria:

(a) The management approach proposed by the firm for coordination of its consultants and interaction with the State's management team;

(b) The professional competence and recent experience of key staff of the firm and its consultants;

(c) Understanding of project requirements and familiarity with codes, regulations, and conditions that will affect the project;

(d) The firm's current workload and active State projects, to verify the ability to meet the project schedule and to ensure an equitable distribution of State contracts;

(e) Benefit to the Maryland economy that would result from a contract with the firm; and

(f) The quality of design and the success of program interpretation in satisfying the user's functional and aesthetic requirements in completed projects of similar complexity.

(10) The criteria to be used for evaluation of benefit to the Maryland economy shall be the criteria stated in COMAR 21.05.03.03A(3)(b).

(11) The Secretary shall submit the report of the Qualification Committee or the second-phase review panel ranking the candidates to the General Board for action.

(12) Upon acceptance of the report ranking the candidates for an individual project, the General Board shall solicit a price proposal from the firm ranked number one, provided that firm has received a rating of not less than 85 percent.

(13) Upon acceptance of the report ranking the candidates for an indefinite quantity contract, the General Board shall solicit price proposals from the number of firms, starting with the highest ranked firm, determined by the General Board to be reasonably necessary to meet the State's expected needs. Only those firms receiving an evaluation rating of not less than 85 percent of the maximum attainable shall be eligible for further consideration.

#### D. Notification to Respondents.

(1) Individual Projects.

(a) The Administrator shall immediately give written notification to the candidate firm ranked number one under §C(12) of this regulation that it has been so ranked and can anticipate a request for a price proposal.

(b) Notification.

(i) The Administrator shall immediately give written notification to each of the remaining candidate firms of its ranking and inform each of its rights as described in §D(1)(b)(ii) and (iii) of this regulation.

(ii) A candidate firm not ranked number one is entitled to a meeting to discuss its ranking with the Qualification Committee or with the second-phase review panel if one was used. The request for a meeting shall be written and shall be received by the Administrator within 10 days of the formal acceptance by the General Board of the report ranking the candidate firms. The request to meet with the Qualification Committee or second-phase review panel shall identify the issues which the candidate firm wishes to discuss.

(iii) A candidate firm still dissatisfied after having met with the Qualification Committee or second-phase review panel is entitled to request an appearance before the General Board. The request to appear before the General Board shall be written and shall contain or consist of a brief which details the candidate firm's objections. The request shall be received by the Administrator within 7 days of the meeting held in accordance with §D(1)(b)(ii) of this regulation.

(2) Indefinite Quantity Contracts.

(a) The Administrator shall immediately give written notification to each candidate firm ranked among the group selected by the General Board under §C(13) of this regulation that the firm has been so ranked and selected and can anticipate a request for a price proposal.

(b) Notification.

(i) The Administrator shall immediately give written notification to each remaining candidate firm not included in the group selected under §C(3) of this regulation of its respective ranking and inform each of its rights as described in §D(2)(b)(ii) and (iii) of this regulation.

(ii) A candidate firm not included in the group selected under §C(13) of this regulation is entitled to a meeting to discuss its ranking with the Qualification Committee or with the second-phase review panel if one was used. The request for a meeting shall be received by the Administrator within 10 days of the formal acceptance by the General Board of the report ranking the candidate firms. The request to meet with the Qualification Committee or second-phase review panel shall identify the issues which the candidate firm wishes to discuss.

(iii) A candidate firm still dissatisfied after having met with the Qualification Committee or second-phase review panel is entitled to request an appearance before the General Board. The request to appear before the General Board shall be written and shall contain or consist of a brief which details the candidate firm's objections. The request shall be received by the Administrator within 7 days of the meeting held in accordance with §D(2)(b)(ii) of this regulation.

E. Request for Price Proposal.

(1) Upon the General Board's acceptance of the report ranking the candidate firms for an individual project, the Administrator shall send a request for a price proposal to the candidate firm ranked number one.

(2) Upon the General Board's acceptance of the report ranking the candidate firms for indefinite quantity contracts, the Administrator shall send a request for a price proposal to each firm in the group selected under §C(13) of this regulation.

(3) A request for proposal shall state the following:

(a) The price proposal shall be subject to negotiation;

- (b) Negotiations shall be limited to a period of time not to exceed 30 days;
- (c) If unable to negotiate a satisfactory contract within 30 days, negotiations shall be terminated;
- (d) In preparing the price proposal, consideration shall be given to the guidelines for the preparation of price proposals, the project program, requirements of the using agency, and the requirements of the Department of General Services Procedure Manual for Professional Services.

#### F. Preproposal Meeting.

##### (1) Individual Projects.

- (a) At the time the request for proposal is sent out, a date shall be designated for preproposal meeting. When desirable, the preproposal meeting shall be held on-site.
- (b) The preproposal meeting shall be attended by the candidate firm and the appropriate personnel from within the Department and the using agency.

##### (2) Indefinite Quantity Contracts. A preproposal meeting may be held for indefinite quantity contracts.

#### G. Proposal Evaluation.

(1) The proposal of a candidate firm shall be evaluated by the Negotiation Committee which shall be composed of appropriate personnel of the Department and one or more representatives of the appropriate using agency or agencies.

(2) The Secretary shall determine the number of using agency representatives on the Negotiation Committee and which using agencies shall be represented.

#### H. Duties of the Negotiation Committee.

(1) The Negotiation Committee shall consider the scope and complexity of the professional services required and conduct a detailed analysis of the cost of the services.

(2) The Negotiation Committee shall attempt to negotiate a satisfactory contract with each candidate firm at a price or, in the case of an indefinite quantity contract, at rates the Negotiation Committee determines to be fair, competitive, and reasonable.

(3) Individual Projects. If the Negotiation Committee is unable to negotiate a satisfactory contract with the candidate firm, it shall terminate negotiations with that firm and shall then negotiate with the next most eligible candidate firm in the same manner.

(4) Indefinite Quantity Contracts. If the Negotiation Committee is unable to negotiate a satisfactory contract with a candidate firm, it shall terminate negotiations with that firm.

(5) If the Negotiation Committee is unable to negotiate a satisfactory contract with any of the eligible candidate firms included in the report ranking the candidate firms, it shall request the General Board to readvertise the project and reinstate the selection process.

#### I. Preliminary Negotiations.

(1) After the preproposal meeting, if one is held, the candidate firm shall submit to the General Board a detailed price proposal in accordance with the guidelines for submission issued by the Board.

(2) Preliminary negotiations shall be conducted with the candidate firm by the Negotiation Committee in accordance with the schedule and guidelines issued by the General Board.

(3) Preliminary negotiations shall be intended to reach an agreement on the limits to the scope of services for the project or the indefinite quantity contract.

J. Final Negotiation.

(1) The candidate firm shall meet with the Negotiation Committee for a final negotiation at a time determined by the Negotiation Committee.

(2) Unless otherwise determined by the General Board, the time determined by the Negotiation Committee for a final negotiation shall be within 30 days of the General Board's formal acceptance of the candidate firm.

(3) Individual Projects. If the candidate firm and the Negotiation Committee are unable to negotiate a satisfactory contract, the negotiations shall be terminated in accordance with §H(3) of this regulation.

(4) Indefinite Quantity Contracts. If negotiations result in negotiation of contracts with an insufficient number of firms to meet the State's expected needs, the General Board may add to the list of firms from whom price proposals are to be solicited under §C(3) of this regulation. The procedures set forth in §§D, E, G, H, I, and this section of this regulation shall then be followed with respect to these additional firms until a satisfactory number of contracts have been negotiated or until the Negotiation Committee determines that further negotiations should not be held.

K. Award Recommendation. If the candidate firms and the Negotiation Committee are able to negotiate satisfactory contracts, the Negotiation Committee shall prepare or have prepared the following:

(1) The contract documents relative to the scope of services for the project or indefinite quantity contract;

(2) The detailed price proposals relating to the scope of services;

(3) Certification to the General Board that the negotiations have been conducted in accordance with the regulations governing the Negotiation Committee and that price proposals are fair, competitive, and reasonable.

L. Board Action on Award Recommendation.

(1) Public Announcement of Meeting. The Administrator of the General Board shall place public announcements in the Maryland Register and other appropriate publications. The announcements shall:

(a) Be published at least 5 days before the meeting;

(b) Contain a description of projects and actions to be taken by the General Board; and

(c) Show the date, time, and place of the meeting.

(2) Presentation to the General Board. The Negotiation Committee shall submit the documentation identified in §K of this regulation to the General Board for action. The General Board shall review the Negotiation Committee's recommendation and render an immediate decision, postpone for cause, or reject the recommendation and indicate remedial processing.

M. An indefinite quantity contract shall state the maximum compensation payable to the firm for any single project and for the aggregate of projects for which services may be provided.

N. Upon award of an indefinite quantity contract, a selected firm shall perform future work assignments in accordance with the labor category hourly rate and overhead rate multiplier agreed to and set forth in the indefinite quantity contract.

21.12.04.13

### **.13 Certification and Public Review.**

A. Certification of General Board's Action to the Board of Public Works. If the General Board accepts the recommendation of the Negotiation Committee, the General Board shall submit to the Board of Public Works a certification of each selection to include the:

- (1) Project number and description of an individual project;
- (2) Name of the selected firms;
- (3) Reasons for the selections;
- (4) Project cost of an individual project;
- (5) Contract number and description of an indefinite quantity contract; and
- (6) Maximum compensation payable for any single project and for an aggregate of projects under an indefinite quantity contract.

B. Public Review of Contract Documents. Subsequent to approval of contract award by the Board of Public Works, the General Board shall make available for public review all documents relating to each award. The documents shall include the:

- (1) Technical resumes;
- (2) Proposals;
- (3) Scope of services;
- (4) Programs;
- (5) Detailed contracts;
- (6) Staff reports;
- (7) Internal work sheets; and
- (8) Other information relative to the negotiation and award of contracts.

21.12.04.13

### **.13 Certification and Public Review.**

A. Certification of General Board's Action to the Board of Public Works. If the General Board accepts the recommendation of the Negotiation Committee, the General Board shall submit to the Board of Public Works a certification of each selection to include the:

- (1) Project number and description of an individual project;
- (2) Name of the selected firms;
- (3) Reasons for the selections;
- (4) Project cost of an individual project;
- (5) Contract number and description of an indefinite quantity contract; and

(6) Maximum compensation payable for any single project and for an aggregate of projects under an indefinite quantity contract.

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- (1) Technical resumes;
- (2) Proposals;
- (3) Scope of services;
- (4) Programs;
- (5) Detailed contracts;
- (6) Staff reports;
- (7) Internal work sheets; and
- (8) Other information relative to the negotiation and award of contracts.

*21.12.04.13-1*

### **.13-1 Debriefings.**

A. Offerors shall be debriefed upon written request submitted to the Administrator within a reasonable time. Debriefings shall be provided at the earliest feasible time after a final determination recommending contract award.

B. Debriefing.

(1) Debriefing shall:

(a) Be limited to discussion of the unsuccessful offeror's qualifications and proposal and may not include specific discussion of a competing offeror's qualifications or proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful offeror's qualifications and proposal; and

(c) Provide information on areas in which the unsuccessful offeror's proposal was deemed weak or deficient.

(2) Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the Qualification Committee or the Negotiation Committee, but may include a summary of the rationale for the selection decision and recommended contract award.

C. A summary of the debriefing shall be made a part of the contract file.

D. This regulation does not alter or extend the time limits stated in:

(1) COMAR 21.12.04.12D for requesting a meeting with the Qualification Committee or for requesting an appearance before the General Board; or

(2) State Finance and Procurement Article, §13-316, Annotated Code of Maryland, for appeal to the Board of Public Works.

*21.12.04.13-2*

## **.13-2 Work Assignments Under Indefinite Quantity Contracts.**

### **A. Work Assignments of \$200,000 or Less.**

- (1) After the Board of Public Works has approved the award of an indefinite quantity contract, a unit with authority to award contracts may assign work for which the fees are \$200,000 or less to selected firms in accordance with this section and other requirements of State procurement law.
- (2) The unit and the firm shall agree on the specific scope of services to be performed, the maximum hours or fees approved for the specific work assignment, and other matters pertinent to the work assignment.
- (3) The unit and the firm shall execute a work order subject to the terms and conditions of the original indefinite quantity contract and all additional agreed upon terms.
- (4) The unit shall obtain all other approvals required by law.
- (5) A signed work order shall become a part of the contract.
- (6) The aggregate fees payable to a single firm for work assignments issued under this section under an indefinite quantity contract may not exceed \$500,000 without prior approval of the General Board and the Board of Public Works.

### **B. Work Assignments of Over \$200,000.**

- (1) After the Board of Public Works has approved the award of an indefinite quantity contract, the Secretary may assign work for which the fees payable may exceed \$200,000 in accordance with this section.
- (2) When the Secretary receives a request for architectural or engineering services from a using agency for which the fees may exceed \$200,000, the Secretary may request approval from the General Board to obtain the requested services through an existing indefinite quantity contract.
- (3) If the General Board disapproves a request made under §B(2) of this regulation, the Secretary shall obtain the needed services under the procedures for selection of architects and engineers for individual projects.
- (4) If the General Board approves a request made under §(B)(2) of this regulation, the Department may proceed to obtain the services in accordance with the following:
  - (a) A Negotiation Committee and the firm selected for assignment shall agree on:
    - (i) The specific scope of services to be performed,
    - (ii) The maximum hours or fees approved for the work assignment, and
    - (iii) Other matters pertinent to the work assignment;
  - (b) The firm and the Department or other unit with authority to execute a contract shall execute a work order reflecting all agreed upon terms; and
  - (c) The Department shall obtain the approval of the General Board and the Board of Public Works before executing the work order.
- (5) A work order issued under this section shall become a part of the contract.

### **C. Basis of Assignment Under Indefinite Quantity Contracts.**

(1) Work assignments shall be rotated among firms receiving awards under an indefinite quantity contract starting in the order of the ranking of the firms during selection, unless the unit issuing the work assignment finds that:

(a) The firm is unable to perform the assignment, lacks the capability in all respects to perform fully the contract requirements, or lacks the integrity or reliability that will assure good faith performance;

(b) The hours or fees proposed by the firm for the services needed cannot successfully be negotiated to an amount the unit considers fair and reasonable;

(c) Another firm has special experience or qualifications, including geographic proximity to the site for which services are needed, that make it in the State's best interest to give the assignment to the other firm; or

(d) Assignment to another firm would tend to balance to a greater extent, among firms on the indefinite quantity contract list being used, the fees paid or payable for work assignments previously issued.

(2) If the unit finds that any of the circumstances listed in §C(1)(a) or (b) of this regulation exist, the next firm in the rotation shall be considered for the assignment as provided in §C(1) of this regulation.

(3) If the unit finds that any of the circumstances listed in §C(1)(c) of this regulation exist, the unit shall issue the assignment to the firm considered to have the necessary special experience or qualifications.

(4) If the unit finds that the circumstance listed in §C(1)(d) of this regulation exists, the unit may issue the work order to the firm which before that time has received work assignments worth the least amount in fees paid or payable under the indefinite quantity contract being used.

*21.12.04.13-3*

### **.13-3 Reciprocal Preference.**

A preference may be granted to a resident offeror as provided in COMAR 21.05.01.04.

*21.12.04.13-4*

### **.13-4 Additional Rules for Indefinite Quantity Contracts.**

A. The General Board may impose on the selection and award of indefinite quantity contracts and the assignment of work by a unit under Regulation .13-2 of this chapter any additional, lawful restrictions and requirements as the General Board in its discretion may consider necessary.

B. Effect of Award of an Indefinite Quantity Contract.

(1) Award of an indefinite quantity contract shall entitle a selected firm only to inclusion on the list of firms eligible for work assignments under Regulation .13-2 of this chapter.

(2) Award of an indefinite quantity contract does not constitute a promise or representation by the State that a selected firm will receive any work assignments.

*21.12.04.14*

### **.14 Compensation for Services.**

A. Unacceptable Methods. The following methods of compensation are not acceptable:

(1) Cost plus percentage of cost; and

(2) Percentage of construction cost.

B. Audit. The Department of General Services shall arrange for pre-audits and post-audits, as required. All rates used in cost-plus-fixed-fee compensation shall be verified.

21.12.04.15

## **.15 Affidavits.**

The General Board shall require during the selection process such affidavits and certification as are required by law.

21.12.04.9999

### *Administrative History*

#### **Effective date: July 1, 1981 (8:13 Md. R. II-5)**

Regulations .01A, .02A, C, and .09A amended as an emergency provision effective July 1, 1982 (9:15 Md. R. 1508); emergency status extended at 9:16 Md. R. 1601, 9:17 Md. R. 1698, 9:20 Md. R. 1979; adopted permanently effective October 12, 1982 (9:20 Md. R. 1982)

Regulation .03C amended as an emergency provision effective July 1, 1981 (8:13 Md. R. II-3); emergency status expired October 1, 1981 (Emergency provisions are temporary and not printed in COMAR)

Regulation .03C amended effective May 10, 1982 (9:9 Md. R. 912)

Regulation .11B amended effective April 9, 1985 (12:7 Md. R. 709)

Regulations .01—.13 repealed effective April 1, 1986 (13:6 Md. R. 685)

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Regulations .01—.15 adopted effective April 1, 1986 (13:6 Md. R. 685)

Regulations .01—.04 and .07 amended effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .08A amended effective September 8, 1986 (13:18 Md. R. 2022); January 9, 1989 (15:27 Md. R. 3138); July 20, 1992 (19:14 Md. R. 1286)

Regulations .09 and .10 amended effective January 9, 1989 (15:27 Md. R. 3138)

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Chapter revised effective December 1, 1997 (24:24 Md. R. 1671)

Regulation .01A amended effective February 16, 2004 (31:3 Md. R. 208)

Regulation .02A amended effective February 16, 2004 (31:3 Md. R. 208)

Regulation .08A amended effective December 25, 2000 (27:25 Md. R. 2284)

Regulation .08C amended effective February 16, 2004 (31:3 Md. R. 208)

Regulation .12B, C amended effective December 14, 1998 (25:25 Md. R. 1835)

Regulation .12C—E amended effective February 16, 2004 (31:3 Md. R. 208)

Regulation .13-1A amended effective December 25, 2000 (27:25 Md. R. 2284)

Regulation .13-2A, B amended effective February 16, 2004 (31:3 Md. R. 208)

# **Title 21 STATE PROCUREMENT REGULATIONS**

## ***Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES***

### **Chapter 05 Department of General Services A/E Services \$100,000 or Less**

#### **Authority: State Finance and Procurement Article, §13-304, Annotated Code of Maryland**

*21.12.05.01*

#### **.01 General.**

Architectural and engineering service contracts costing \$100,000 or less awarded through the Department of General Services result from solicitations made by the Director, Office of Engineering and Construction, in the Department of General Services. The firms to be included on the candidate list shall be determined by the Department of General Services Qualification Committee, which shall consider information on each firm's SF-254 and supplement to the SF-254, recommendations from the using agency requesting the services, and letter of interest submitted by architects and engineers. The Director, Office of Engineering and Construction, shall review the candidate list, modify it as necessary to provide opportunity for minority businesses to participate in the solicitation, and determine the firms to be included on the reduced candidate list. The Director of the Office of Engineering and Construction shall solicit price proposals and, when appropriate, technical proposals from the firms on the reduced candidate list. The proposals submitted by the solicited firms shall be reviewed by staff designated by the Director, Office of Engineering and Construction. The staff shall make an appointment recommendation to the Director, Office of Engineering and Construction, who shall make a recommendation for appointment to the Secretary, Department of General Services. If the Secretary concurs with the recommendation, he shall approve the award of the contract and report that action in accordance with COMAR 21.02.01.04B(3) and 21.02.01.05B(1).

*21.12.05.9999*

#### ***Administrative History***

**Effective date: July 1, 1981 (8:13 Md. R. II-5) Regulation .01 amended as an emergency provision effective July 1, 1982 (9:15 Md. R. 1508); emergency status extended at 9:16 Md. R. 1601, 9:17 Md. R. 1698, 9:20 Md. R. 1979; adopted permanently effective October 12, 1982 (9:20 Md. R. 1982); amended effective July 28, 1986 (13:15 Md. R. 1737)**