

**MARYLAND STADIUM AUTHORITY
RESOLUTIONS
PROCUREMENT POLICIES AND PROCEDURES**

WHEREAS, the Maryland Stadium Authority desires to formalize its policies and procedures with respect to procurement; and

WHEREAS, the goals of The Maryland Stadium Authority are to:

- A. Provide public confidence in the Authority's procurement procedures;
- B. Ensure the fair and equitable treatment of all persons who deal with the Authority;
- C. Provide economy in the Authority's procurement activities and maximize to the fullest extent the purchasing power of the Authority;
- D. Meet the Minority Business Goals as established by the State of Maryland;
- E. Provide safeguards for the maintenance of a procurement system of quality and integrity; and
- F. Complete projects on time and within budget.

NOW, THEREFORE, BE IT RESOLVED, that the Maryland Stadium Authority will utilize a fair and equitable competitive process in soliciting and awarding procurement contracts. Solicitations will be tailored for each project to obtain the best value for the State, taking into account all factors which the Authority determines to be important for a particular procurement, such as price, key personnel and staff, Minority Business Enterprise participation, schedule, and/or bidder's capability to perform the work and performance history. The Authority recognizes that certain projects are very time sensitive and must be completed on time so as to meet significant deadlines and budget limitations, that certain projects are funded by private and/or multiple sources of public money and the procurement will have input from such funding partners, and that the Authority has certain obligations to its private tenants. In furtherance of these goals and considerations, the Authority adopts the following Procurement Policies and Procedures:

1) DEFINITIONS

The following terms have the meanings indicated:

- (a) "Authority" means the Maryland Stadium Authority.
- (b) "Change Order" means a written order by the Procurement Officer or designee directing the bidder to make changes to the work.
- (c) "Contract amount" means the value of the entire contract, including any option years.

- (d) “Days” are calendar days. If a deadline falls on a weekend or State holiday, the deadline will be extended to the next business day.
- (e) “Executive Director” means the Executive Director of the Maryland Stadium Authority.
- (f) “Minority Business Enterprise” (MBE) is defined in COMAR 21.01.02.01B(54). All MBEs must be certified pursuant to COMAR 21.11.03.15.
- (g) “Procurement Officer” means the person(s) designated as Procurement Officer by the Executive Director with approval by the Authority to administer Authority Procurement Contracts.
- (h) Proposal:
 - 1. “Proposal” means the response by an offeror to a solicitation to obtain supplies, services, or construction.
 - 2. “Proposal” may include, without limitation, an offeror’s price, description of technical expertise, work experience, and other information requested in the solicitation.
- (i) “Responsible” means a person or entity who has the capability in all respects to dutifully perform fully the contract requirements with the integrity and reliability that ensure good faith performance.
- (j) “Responsive” means a bid or offer submitted in response to a solicitation that conforms in all material respects to the requirements contained in the solicitation.
- (k) “Services” means the rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance.
- (l) “Supplies” means all tangible personal property, including furniture, commodities, equipment, leases of equipment, and insurance, including any incidental services.
- (m) “Authority Procurement Contract” means a procurement identified in paragraph 2, below.

2) **AUTHORITY PROCUREMENT CONTRACTS**

- A. The following contracts are covered by these guidelines:
 - 1. **Professional Services**, including Architecture/Engineering, Construction Management, Financial Advisory Services and Bond Counsel.

2. **Construction**, including Contracts for At Risk Construction Managers and Trade Contractors.
 3. **Supplies**
 4. **Non-professional services**, including on-call contracts for staff to supplement Authority staff.
- B. These policies and procedures do not apply to the following:
1. Contracts with or procurements from:
 - (a) A State agency or unit,
 - (b) A political subdivision of the State,
 - (c) An agency of a political subdivision of the State,
 - (d) A government, including the government of another state or the United States,
 - (e) An agency or political subdivision of a government, or
 - (f) A bistate, multistate, bicounty, or multicounty governmental agency;
 2. Acquisition of real property or a permanent or temporary interest in real estate;
 3. Disposal of real or personal property;
 4. Contracts for confidential professional services in connection with threatened or pending litigation;
 5. Energy contracts, which are agreements for the provision of energy services in which a person or entity agrees to design, install, finance, maintain or manage energy efficiency of a building or facility in exchange for an investment in the facility; or
 6. Agreements with professional sports teams.

3) **METHODS OF PROCUREMENT**

- A. **All Authority procurement contracts shall be awarded by one of the following methods:**
1. Competitive sealed bidding;
 2. Competitive sealed proposals;
 3. Expedited procurement, when permitted by subsection D, below;

4. Small procurements, when permitted by subsection E, below; or
5. Noncompetitive negotiations:
 - (a) Sole Source, when permitted by F-1, below,
 - (b) Emergency, when permitted by F-2, below.

B. Competitive Sealed Bids

1. The Authority may require prequalification of bidders.
2. Bids shall be submitted in a sealed envelope marked with the bidder's name. All bids will be publicly opened at the time and place stated in the request.
3. The Authority shall award the contract with reasonable promptness after the date of bid opening to that person or entity with the lowest bid which is both responsible and responsive.
4. All bids may be rejected if the Authority determines that it is in the public interest to do so.

C. Competitive Sealed Proposals

1. No special form or procedure is prescribed for procurement by competitive sealed proposal. A request for proposals shall describe the procurement in sufficient detail to provide an understanding of what is required, but should not be unnecessarily restrictive so as to preclude or limit competition. The request shall state applicable dates for submission of the proposal and any other information necessary and useful, including the evaluation criteria. The evaluation criteria may include price and technical criteria, as appropriate.
2. Precautions shall be taken to avoid prejudice in all selections, and to assure that a fair and reasonable price is obtained. This selection does not preclude the Authority from making an award when the Authority receives only one proposal after advertising.
3. The Authority may conduct oral negotiations before or after the receipt of proposals. The purpose of the negotiation is to promote understanding of the Authority's requirements and the offerors' proposals and to facilitate arrival at a contract that is most advantageous to the Authority. The Authority may require offerors to submit best and final offers after negotiations.
4. The Authority shall make an award to the offeror whose proposal or, if applicable, best and final offer, after giving effect to the understanding

gained during negotiation, is determined to be most advantageous to the Authority.

5. The Authority may abandon a procurement by competitive proposal if it is determined by the Procurement Officer and the Executive Director to be in the public interest to do so.
6. The Procurement Officer, Executive Director, the Authority, and the Board of Public Works (if a Construction Contract) shall approve the selected proposal.

D. **Expedited Procurements:** This method may be used only in the limited circumstances described below.

1. Before using an expedited procurement, the following conditions must be met:
 - (a) The Procurement Officer makes a written determination that the use of this method is necessary:
 - (i) to avoid the late opening of a facility;
 - (ii) to meet commitments to private tenants with regard to the opening each season of an athletic facility; or
 - (iii) to complete unanticipated repairs to an athletic facility that must be completed between scheduled games; or
 - (iv) to complete time-critical feasibility and impact studies for new projects.
 - (b) The Procurement Officer prescribes a procurement methodology, including justification of any noncompetitive solicitation.
 - (c) The Executive Director approves the use of the expedited method for the particular procurement and the procurement methodology.
 - (d) The Authority has received prior notice of the intent to use the expedited method and the proposed procurement methodology.]
2. Competitive solicitation of bids or offers shall be the preferred method of making an expedited procurement and may include public notice in a newspaper or trade publication, notice by posting on the Authority's website or on the eMaryland Marketplace website, or direct solicitation from persons who are believed to be qualified to perform the contract.
3. A noncompetitive source selection may be made if the time available is insufficient to permit a competitive solicitation or some other reason precludes the use of competitive solicitation.
4. The use of expedited procurement methods, including a description of the number of bids or offers received, and the prices submitted, shall be reported to the Authority on a regular basis.

E. **Small Procurements** - Authority Procurement Contracts for less than \$50,000 may be procured under this provision.

1. For contracts less than \$10,000, competition is preferred, but not required.
2. For contracts between \$10,000 and \$50,000, competition shall be sought to the extent practicable, as determined by the Procurement Officer, considering such factors as availability of vendors, dollar value of the procurement, cost of administering the procurement, time available to complete the procurement, including delivery time, and sound business judgment.

F. **Non-competitive Procurements:**

1. Procurement contracts of less than \$50,000, should be made as described in subsection E, above, rather than under the provisions of this subsection.
2. **Sole Source Procurement**
 - (a) Condition for Use - Sole source procurement is not permissible unless a requirement is available from only a single vendor.
 - (b) The determination as to whether a procurement shall be made as a sole source shall be made by the Procurement Officer, in writing, and must state the basis for the decision. The Procurement Officer's determination must be approved by the Executive Director and reported to the Authority.
3. **Emergency Procurement**
 - (a) Application - The Executive Director may award an emergency contract by means other than competitive sealed bid or competitive proposal.
 - (b) Scope - Emergency means a sudden and unexpected occurrence or condition which the Executive Director could not reasonably foresee and which requires action to avoid or to mitigate damage to the environment or to health, safety, or welfare. An emergency procurement is limited to the procurement of only those items necessary to avoid or to mitigate the damage to the environment or to health, safety, or welfare.
 - (c) The use of an Emergency Procurement shall be reported as expeditiously as possible to the Authority.

3.1) INSPECTION OF CERTAIN DOCUMENTS AND DISCLOSURE OF INFORMATION

A. After a solicitation for bids or proposals is issued under section 3) above, and until the procurement officer makes a recommendation for award of the contract,

the procurement officer may disclose information only as set forth in COMAR 21.05.01.05.

- B. Before bids are opened:
 - 1. Bids shall remain sealed; and
 - 2. The procurement officer may not disclose the name of any person who has submitted a bid.

- C. Before the procurement officer makes a recommendation for award of the contract, a procurement officer may not disclose the name of any person who has submitted a proposal.

- D. Before awarding a procurement contract based on competitive sealed proposals, a procurement officer may not disclose the contents of a proposal to any person other than a person responsible for evaluating or reviewing the proposal, or approving the contract award, except as permitted by State Finance and Procurement Article, §13-105, Annotated Code of Maryland.

4) PROJECTS WITH SIGNIFICANT NON-STATE FUNDS

The Authority may approve exceptions to these policies for projects involving significant non-State funds with a written justification by the Executive Director that the exception is reasonable and necessary to carry out the objectives of these policies.

5) CONTRACT TERM LIMITATION

Term contracts, that is contracts for a duration of time, are limited to a maximum initial term of three years, with renewal options for a maximum total of five years.

6) MINORITY BUSINESS ENTERPRISES (MBE)

The Authority seeks to encourage the use of MBE firms on all projects, either as prime contracts, consultants, subcontractors, subconsultants, or suppliers, etc., and to meet the MBE goals established by the State of Maryland. To fulfill this goal, the following actions should be taken in connection with Authority Procurement Contracts:

- A. Prior to and during the procurement of construction contracts, Authority representatives should consider:
 - 1. Meeting with the MBE office of the local jurisdiction and MDOT;
 - 2. Meeting with and/or providing information regarding a project to local MBE groups;
 - 3. Holding and attending advertised MBE outreach programs; and

4. Assisting contractors, consultants, etc., in locating potential MBE subcontractors or consultants.
- B. The Authority is bound by State Finance & Procurement Code, Title 14, Subtitle 3, Minority Business Participation, and shall follow all requirements stated therein.

7) ADVERTISING

- A. The Authority shall advertise its solicitations for Competitive Sealed Bids and Competitive Sealed Proposals.
- B. The Authority shall advertise, to the extent practicable, its expedited procurement solicitations.
- C. The eMaryland Marketplace website is the preferred advertising venue, but other venues, including the Authority's website, may be used where appropriate.

8) CONFLICT OF INTEREST

Members of the Authority, the Executive Director, and Authority staff are subject to the State ethics law and its provisions dealing with conflict of interest. Members of the Authority, the Executive Director, and Authority staff may not accept or receive, directly or indirectly, any money, property, or other benefit from any person or entity doing business with, or interested in doing business with, the Authority. Members of the Authority, the Executive Director, and Authority staff may not have any financial interest in any firm or company doing business with the Authority, or in any contract to which the Authority is a party. Any exception to this policy requires the approval of the State Ethics Commission.

9) CONTRACT APPROVAL AUTHORITY

- A. All contracts of \$50,000 or more must be approved by the Authority, prior to execution, except in the case of Emergency procurements. The use of Emergency Procurements shall be reported to the Authority as expeditiously as possible following award. All contract modifications over \$50,000 must be reported regularly to the Authority.
- B. The award of contracts and the issuance of contract modifications between \$10,000 and \$50,000 must be approved prior to award by the Executive Director. The award of contracts and the issuance of contract modifications between \$10,000 and \$50,000 must be reported regularly to the Authority.
- C. The Procurement Officer is authorized to award contracts and approve contract modifications for \$10,000 or less.

10) BID PROTESTS

A. Time Restrictions.

1. 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 submitted to the Procurement Officer before bid opening or the closing date for receipt of initial proposals.
2. In all other cases, protests shall be submitted to the Procurement Officer not later than seven days after the basis for protest is known, or should have been known, whichever is earlier.
3. A protest received by the Procurement Officer after the time limits of subsections 1 and 2 above may not be considered and shall be denied as untimely.

B. Form and Content of Bid Protests.

The written protest shall include as a minimum the following content:

1. The name and address of the protestor;
2. Appropriate identification of the procurement and, if a contract has been awarded, its number if known;
3. A statement of the reasons for the protest; and
4. Supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

C. Authority Determination and Finding.

1. After a protest is filed, the Procurement Officer shall consider the protest, all supporting documentation, and any submissions from other bidders or offerors. This consideration is not a contested hearing subject to Title 10, Subtitle 2 of the State Government Article. After such consideration, the Procurement Officer must make a determination and finding regarding the protest.
2. For contracts valued at less than \$10,000, the Procurement Officer may make the determination and finding without consultation with the Executive Director.
3. For contracts valued at \$10,000 or more, the Procurement Officer shall provide a proposed determination and finding to the Executive Director.

The Executive Director shall consider the protest and shall issue the determination and finding.

4. The determination and finding shall be forwarded to the protestor by certified mail, return receipt requested, or by any other method (such as facsimile transmission) which provides evidence of receipt.

D. Appeal.

1. The protestor may appeal the determination and finding to the Authority within seven days after receipt. The appeal must be in writing and must include a copy of the protest and the determination and finding. In addition, the appeal must contain all grounds for disagreement with the determination and finding. Appeals not received within seven days after receipt by the protestor shall be dismissed as untimely.
2. If the protestor desires a hearing on its protest, a request for a hearing must be made, in writing, at the time of the appeal. If a timely request for a hearing is received, the Authority will conduct a hearing in accordance with Title 10, Subtitle 2 of the State Government Article. In accordance with State Government Article §10-205, the Authority may delegate its authority to conduct this hearing to the Office of Administrative Hearings.
3. The Authority shall issue a decision on the protest, which is the final Authority decision. This final decision of the Authority is subject to judicial review in accordance with the rules established by State Government Article § 10-222.

E. Contract Awards.

1. Generally, where a protest has been filed, the Authority will not award the contract until there is a final Authority decision on the protest.
2. The Authority may award a contract before there is a final Authority decision after making a determination and finding which considers:
 - (a) The merits of the protestor's complaint;
 - (b) The need of the Authority for the procurement which is the subject of the protest;
 - (c) The fluctuations in the market, which may impact costs;
 - (d) The unwillingness of the proposed awardee to extend its offer; or
 - (e) Other factors which impact on the public interest.

11) **CONTRACTS VOIDABLE FOR NONCOMPLIANCE**

- A. If the Authority determines that a procurement violates these policies and procedures, the Authority may determine that the procurement contract is voidable, rather than void, if the Authority finds that:
1. All parties acted in good faith;
 2. Ratification of the procurement contract would not undermine the purposes of this chapter; and
 3. The violation, or series of violations, was insignificant or otherwise did not prevent substantial compliance with these policies and procedures.
- B. If the Authority determines that a procurement contract is voidable under subsection A of this paragraph, and that the contractor has not acted in violation of the procurement policies and procedures, the Authority may:
1. Ratify the contract if it determines that ratification is in the best interest of the Authority; or
 2. Void the contract.
- C. If the Authority determines that a procurement contract is voidable under subsection A of this paragraph, and that the contractor has acted in violation of these policies and procedures, the Authority may:
1. Void the contract; or
 2. Without prejudice to the Authority's right to appropriate damages, ratify the contract if the Authority determines that ratification is in the best interests of the Authority.