

IN THE COURT OF APPEALS OF MARYLAND
ADMINISTRATIVE ORDER ON
PROCUREMENT BY THE JUDICIAL BRANCH

WHEREAS, the State Procurement Law, set forth in Division II of the State Finance and Procurement Article, does not apply to the Judicial Branch, as it is a separate branch of government; and

WHEREAS, an inherent power of the Judicial Branch is the power to procure goods and services for the operations necessary for the administration of justice; and

WHEREAS, the Judicial Branch created, pursuant to an Administrative Order issued on November 7, 2001, a Procurement Policy, which has been revised periodically, with the most recently updated version posted on the Judicial Branch's website; and

WHEREAS, the Judicial Branch strives to maintain a procurement and purchasing system of fairness, equity, economy, efficiency, integrity, and transparency; and

WHEREAS, on June 29, 2020, the Court of Appeals of Maryland adopted a new Chapter 900 of Title 16 of the Maryland Rules, with an effective date of August 1, 2020; and

WHEREAS, Rule 16-913(f) states, in part: "Inspection of judicial records in the form of procurement documents shall be governed exclusively by the Procurement Policy of the Judiciary approved by the Chief Judge of the Court of Appeals"; and

WHEREAS, the Procurement Policy in effect at the time of the passage of Rule 16-913(f) did not describe those procurement documents that are, or are not, available for public inspection; and

WHEREAS, an updated Procurement Policy that effectuated Rule 16-913(f), as well as otherwise conform the Policy to best practices recognized since the last update, having been approved by the Chief Judge on August 18, 2020; and

WHEREAS, clarification of the Diversity & Outreach Program and its components as an integral part of the Procurement Policy requires amendments to the updated Procurement Policy; and

WHEREAS, the State Court Administrator having presented a revised updated Procurement Policy to the Chief Judge with her recommendation for approval,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do this 4th day of November 2020, hereby order that:

- (a) *Definition.* In this Order, the term “Judicial Branch” means the Court of Appeals, Court of Special Appeals, District Court of Maryland, Clerks of the Circuit Courts, Administrative Office of the Courts, and Judicial Units; and
- (b) *Assignment of Responsibility.* The Department of Procurement, Contract & Grant Administration of the Administrative Office of the Courts shall be responsible for procurement and purchasing by the Judicial Branch, which includes maintaining and administering the Procurement Policy; and
- (c) *Policy Updates and Revisions.*
 1. As part of its duty to maintain and administer the Procurement Policy, the Department of Procurement, Contract & Grant Administration shall update and make revisions to the Procurement Policy from time to time as appropriate to advance the Purposes below; including identifying which procurement documents are, or are not, available

for public inspection, and shall submit proposed changes to the State Court Administrator for review;

2. Upon the State Court Administrator's satisfaction with the revised draft, the State Court Administrator shall present the proposed revised draft for approval by the Chief Judge of the Court of Appeals;
3. The approved version of the Procurement Policy shall be posted on the Judicial Branch's website; and

(d) *Purposes.* The purposes of the Procurement Policy include:

1. Providing for increased public confidence in the procedures followed in Judicial Branch procurement;
2. Ensuring the fair and equitable treatment of all persons who deal with the procurement system of the Judicial Branch;
3. Simplifying, clarifying, and modernizing the procedures governing procurement by the Judicial Branch;
4. Permitting the continued development of procurement policies, procedures, and practices;
5. Providing increased economy in Judicial Branch procurement activities, and maximizing to the fullest extent the purchasing power of the Judicial Branch;
6. Providing safeguards for the maintenance by the Judicial Branch of a procurement system of quality and integrity;
7. Fostering effective broad-based competition through support of the free enterprise system;
8. Promoting openness of procurement records, subject only to limits that are reasonably necessary to: (i) protect the integrity of the procurement

process and (ii) protect the privacy and security of those who deal with the procurement system of the Judicial Branch;

9. Promoting development of uniform procurement procedures; and

(e) The revised Procurement Policy dated November 2020, attached as an exhibit to this order, has been recommended by the State Court Administrator for approval, and shall be and hereby is approved; and

(f) The Administrative Order on Procurement by the Judicial Branch, issued on August 18, 2020, shall be and hereby is rescinded, effective immediately.

/s/ Mary Ellen Barbera

Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: November 4, 2020

/s/ Suzanne C. Johnson

Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal Materials Act
(§§ 10-1601 et seq. of the State Government Article) this document
is authentic.



2020-11-05 14:09-05:00

Suzanne C. Johnson, Clerk

Pursuant to the Maryland Uniform Electronic Legal Materials
Act (§§ 10-1601 et seq. of the State Government Article) this
document is authentic.



Gregory Hilton, Clerk

PROCUREMENT, CONTRACT AND GRANT ADMINISTRATION

7.1 PROCUREMENT POLICY

(a) ARTICLE I. GENERAL PROVISIONS

(1) Section 1: Authority

(A) Judicial Branch Procurement Authority

As an independent branch of State Government, the Maryland Judiciary establishes a Procurement Policy under the authority of the Chief Judge of the Court of Appeals pursuant to the Maryland Constitution, Article IV, Section 18. This Policy does not supplant any constitutional or statutory rights possessed by the Judiciary.

(B) Delegated Authority

- (i) The Chief Judge, or designee, shall approve all Judiciary Contracts and Contract Modifications over \$500,000 in value to include the value of all renewal Options.
- (ii) The State Court Administrator (the SCA), or designee, is delegated approval authority for all Contracts with a value, including all renewal Options, over \$100,000 and up to a value of \$500,000. If a modification raises the total value of the Contract above the delegated authority, approval shall be elevated to the Chief Judge.
- (iii) The Director of Procurement, Contract and Grant Administration (the Director), or designee, is delegated approval authority for all Contracts with a value up to \$100,000, including all renewal Options. If a modification raises the total value of the Contract above the delegated authority, approval shall be elevated to the approving official who has the authority. For any initial Contract Modification that increases the total Contract value over \$100,000, the SCA shall approve the modification. Once the SCA has approved the Contract to exceed \$100,000, the Director will approve all Contract Modifications until the value of the Contract exceeds \$200,000. This approval procedure shall apply for each increment of \$100,000 up to a total Contract value of \$500,000.
- (iv) Any Contract or Contract Modification with a value over \$25,000 also requires approval of the Managing Legal Counsel, or designee, within the Administrative Office of the Courts for legal form and sufficiency before the Contract or modification can be executed.
- (v) Renewals: As long as the total amounts of the Contract remains within the delegated dollar value ranges, including any modifications, the Procurement Specialist, after obtaining all appropriate approvals, may execute Contract renewals.
- (vi) Sole Source Determinations: Determinations for Contract amounts up to \$100,000 may be approved by the Director, or designee. Determinations for Contract amounts over \$100,000 require approval by the Deputy State Court Administrator or designee.

(C) Cancellation and Rejection of IFBs and RFPs

The Director may cancel a Solicitation or reject all Bids or Proposals.

(2) Section 2: Scope

(A) Applicability

The Judicial Branch Procurement Policy applies to the Court of Appeals, the Court of Special Appeals, the District Court of Maryland, Offices of the Clerks of the Circuit Courts, Administrative Office of the Courts, and Judicial Units.

(B) Not Applicable

This policy does not apply to:

- (i) Memoranda of Understanding, Memoranda of Agreements, or like business agreements between two or more governmental bodies that define the deliverables, payments, and roles and responsibilities of the parties in the conduct of efforts of mutual interest;
- (ii) Grant agreements;
- (iii) Disposal of surplus property;
- (iv) Agreements with entities that have legally recognized monopolies with whom the Judiciary must do business; [e.g., National Bar Examiners] and;
- (v) Real Property Leases negotiated by the Department of General Services.

(C) Exceptions

The Chief Judge shall have sole authority to permit exceptions or to waive any provision to this Policy.

(D) Procurement Procedures Manual

The Director shall maintain a Procurement Manual. The Manual may include details, procedures, or processes that support the policies stated in this document. The Manual may be periodically updated as the Director deems necessary.

(3) Section 3: Definitions

- (A) "Appeals Board" means the three-member panel that hears all Contract appeals within the Judicial Branch chaired by the Managing Legal Counsel, or designee, within the Administrative Office of the Courts, a representative of the Clerks of the Circuit Courts, and a representative of the Office of the Chief Clerk of the District Court.
- (B) "Bid" means the response by a Bidder to an Invitation for Bids issued by the Judiciary to obtain goods or services.

- (C) “Bidder” means an entity that submits a bid in response to a Solicitation.
- (D) “Business” means any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.
- (E) “Contract” means a formal, written agreement entered into by the Judiciary for the of materials, supplies, and services.
- (F) “Contract Modification” means any written alteration in the Specifications within the general scope of work or other provision of an existing Contract, but does not apply to the Judiciary’s exercise of its Option to extend the term.
- (G) “Contractor” means any Person having received a Contract award by the Judiciary but does not include an employee with an employment contract or an employee organization with a collective bargaining agreement.
- (H) “Day” means calendar Day, unless otherwise defined.
- (I) “Determination” means a written decision made by a Procurement Specialist related to the Procurement process.
- (J) “Diversity & Outreach Program” means the Judiciary Program established to encourage and increase participation in Judiciary procurements by underrepresented or disadvantaged groups. The Program includes Minority Business Enterprises (MBE) and Veteran-owned Small Businesses (VoSB).
- (K) “Emergency” means a sudden and unexpected occurrence or condition which requires an action to avoid or to mitigate serious damage to health, property, safety, or welfare to persons, facilities, or assets.
- (L) “Equipment” means property of a durable nature that retains its identity throughout its useful life, but does not include software, commodities, or motor vehicles.
- (M) “Equivalent Item” means any Item of which the quality, design, or performance characteristics are functionally equal or superior to an Item specified in a Solicitation.
- (N) “Grant” means a defined amount of money that is awarded by or to a court, Judicial Unit, state or local government agency, institutions of higher education, community organization, or non- profit organization.
- (O) “Item” means Equipment, supplies, commodities, services, and maintenance.
- (P) “Lease” means a Contract under which the Judiciary uses real or personal property to which the Judiciary does not possess title. Lease does not include Lease-purchase or similar

financing transactions.

- (Q) “Memorandum of Agreement” or “MOA” has the same meaning as “Memorandum of Understanding.”
- (R) “Memorandum of Understanding” or “MOU” means a written agreement between two or more governmental bodies that defines the deliverables, payments, and roles and responsibilities of the parties in the conduct of efforts of mutual interest.
- (S) “Minority Business Enterprise (MBE)” means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least 51 percent owned and controlled by one or more individuals who are in a minority group (African American, Native American, Asian, Hispanic, women, or the physically or mentally disabled) that is socially and economically disadvantaged, and managed and operated by one or more of the socially and economically disadvantaged individuals who own it, and is so certified by the Maryland Department of Transportation.
- (T) “Offeror” means an entity that submits a Proposal in response to a Solicitation.
- (U) “Option” means the unilateral right of the Judiciary under a Contract to extend the Contract for an additional period of time, or to purchase limited additional goods or labor, or to purchase materials or facilities that have been Leased.
- (V) “Person” means any individual, or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.
- (W) “Procurement” includes all functions that pertain to the process of buying, leasing, purchasing, or otherwise obtaining any Equipment, materials, supplies, and services, including description of requirements, selection, and Solicitation of sources, preparation and Award of Contracts, as well as written Determinations and findings pertaining to the Procurement process.
- (X) “Procurement Specialist” means a Person authorized by the Judiciary to conduct and oversee Procurement activities.
- (Y) “Proposal” means the response by an Offeror to a Request for Proposals issued by the Judiciary to obtain goods or services. The response may include, but is not limited to, an Offeror's price and terms for the proposed Contract, a description of technical expertise, work experience, and other information as requested in the Solicitation.
- (Z) “Responsible” means a Person who has been determined to have the capability to perform fully the Contract requirements and possesses the reliability that assures good faith performance.
- (AA) “Responsive” means a Bid that conforms in all material aspects to the requirements contained in the Invitation for Bids.

- (BB) “Small Procurement” means the use of the procedures set forth in the Procurement Procedures Manual to obtain Items reasonably expected by the Procurement Specialist to cost \$25,000 or less.
- (CC) “Sole Source” means that the Procurement Specialist has determined that a competitive source selection method cannot be used.
- (DD) “Solicitation” means Invitation for Bids, Request for Proposals, or any other method or instrument used to communicate the Judiciary’s Procurement needs to potential Bidders or Offerors.
- (EE) “Specification” means a clear and accurate description of the functional characteristics or the nature of an Item to be procured. It may include a statement of any of the Judiciary’s Procurement requirements and may provide for submission of samples, inspection, or testing of an Item before Procurement.
- (FF) “Using Unit” means any Judiciary Unit that uses any goods or labor procured under this policy.
- (GG) “Vendor” means a Person who desires to enter, or enters, into a Contract with the Judiciary.
- (HH) “Veteran” means an individual who has served on active duty in the armed forces of the United States, other than for training, and was discharged or released from service under conditions other than dishonorable.
- (II) “Veteran-owned Small Business Enterprise” means any legal entity that meets the requirements set by the United States Small Business Administration, that is organized to engage in commercial transactions, and is at least 51 percent owned and controlled by one or more individuals who are Veterans, and who manage the operations of the business, and is so certified by eMaryland Marketplace Advantage (eMMA).

(4) Section 4: Principal Policies and Purposes

These policies and purposes are intended to be considered by the assigned Procurement Specialist in every Solicitation the Judiciary initiates.

The principal policies and purposes of Judiciary Procurements are to:

- (A) Provide for increased public confidence in the procedures followed in Judiciary Procurements and to ensure the fair and equitable treatment of all Persons who deal with the Procurement system of the Judiciary;
- (B) Simplify, clarify, and modernize the regulations governing Procurements by the Judiciary;
- (C) Permit the continued development of Procurement regulations, policies, and practices;

- (D) Provide increased economy in Judiciary Procurement activities and to maximize to the fullest extent the purchasing power of the Judiciary;
- (E) Provide safeguards for the maintenance of a Procurement system of quality and integrity;
- (F) Foster effective broad-based competition through support of the free enterprise system; and,
- (G) Promote the development of uniform Procurement procedures.

(5) Section 5: Mandatory Written Solicitation Requirements

(A) Judicial Records Request

A notice regarding the Access to Judicial Records Title of the Maryland Rules is a mandatory provision in all Solicitations.

(B) Diversity & Outreach Program - Minority Business Enterprises (MBE) and Veteran-owned Small Businesses (VoSB).

All Units of the Judiciary shall abide by the Judiciary's Diversity & Outreach Program. The Program can be found on the Judiciary's Department of Procurement, Contract and Grant Administration website.

The following Program notification is a mandatory provision in all Solicitations:

"Minority Business Enterprises and Veteran-owned Small Businesses are encouraged to respond to this solicitation notice."

(C) Arrearages

An arrearages clause is a mandatory provision in all Solicitations, as follows:

"By submitting a response to this Solicitation, a Vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the Judiciary or the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract, if selected for Contract Award."

(D) Bid/Proposal Affidavit

Each Solicitation shall provide notice that the Bid/Proposal affidavit provided by the Judiciary shall be completed and submitted to the Department of Procurement, Contract and Grant Administration with the Vendor's Bid or offer.

(6) Section 6: Prohibitions

(A) Automatic Renewal Provisions

There shall be no automatic renewal provision in any Contract.

(B) Cost-plus Contracts

Cost-plus-a-percentage-of-cost Contracts and subcontracts are prohibited.

(7) Section 7: Suspicion that Collusion Has Occurred

(A) If there is a reasonable basis for believing that collusion has occurred among any Persons for any reason, the Procurement Specialist shall immediately notify the Director and send a written notice of this concern to the Managing Legal Counsel, or designee, within the Administrative Office of the Courts.

(B) All documents involved in any Procurement in which there is a reasonable basis for believing that collusion has occurred shall be retained by the Department of Procurement, Contract and Grant Administration. These documents shall be made available to the Managing Legal Counsel, or designee, within the Administrative Office of the Courts immediately upon request.

(b) ARTICLE II. SPECIFICATIONS

(1) Section 1: General Purpose

(A) A Specification is the basis for procuring an Item in a cost-effective manner. It is the policy of the Judiciary that Specifications be written so as to permit maximum practicable competition. Specifications may not be drawn in such a manner as to favor a single Vendor over other Vendors.

(B) Brand name, or Equivalent Item, means a Specification that uses one or more manufacturer's names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the Judiciary's Procurement requirements.

(2) Section 2: Responsibility for Preparation

The Using Unit shall be responsible for preparing the Specifications. To the extent practicable or functional, performance criteria shall be emphasized while limiting design or other detailed physical descriptions to those necessary to meet the needs of the Judiciary.

(3) Section 3: Responsibility for Review and Approval

The Procurement Specialist, or designee, shall be responsible for reviewing the Specifications for content, clarity, and completeness and to ensure that the Specifications are nonrestrictive. Final approval of the Specifications shall rest with the Procurement Specialist. Specifications may be revised by the Procurement Specialist for purposes of clarification as long as technical elements of the Specifications remain the same. Revisions which change the technical elements of the Specifications may be made in consultation with the Judiciary Using Unit.

(c) ARTICLE III. PROCUREMENT METHODS

(1) Section 1: General Provisions

(A) Judiciary Procurement Methods

This policy allows six different Procurement methods which are:

- (i) Small Procurements – for Procurements of \$25,000 or less;
- (ii) Invitation for Bids (IFB);
- (iii) Request for Proposals (RFP);
- (iv) Intergovernmental Cooperative Purchasing;
- (v) Sole Source Procurements; and,
- (vi) Emergency Procurements.

The Procurement Specialist shall determine the appropriate method of the Procurement.

(2) Section 2: Small Procurement (\$25,000 or Less)

(A) Application

- (i) Use of the Small Procurement method described shall be based on an initial decision by the Procurement Specialist and application of dollar limits.
- (ii) To the extent that the Department of Procurement, Contract and Grant Administration delegates authority to Using Units to make Small Procurements, those Procurements shall be made in accordance with this Policy and as prescribed in the Procurement Procedures Manual.

(B) Conditions for Use

- (i) Small Procurements are for Procurements of \$25,000 or less, and are classified in two categories:
 - (I) Category I Small Procurements - \$2,500 or less; and,
 - (II) Category II Small Procurements - More than \$2,500 but not more than \$25,000.

- (ii) Prohibitions: A Procurement may not be divided artificially in order to use the Small Procurement method instead of the other Procurement methods set forth in this Policy, or to use a lesser category defined under of this section.

(3) Section 3: Invitation for Bids (IFB)

(A) Application

The decision to use the Invitation for Bids method shall be determined by the Procurement Specialist.

(B) Conditions for Use

When price is the sole or main consideration in a Procurement, an Invitation for Bid may be used as the Procurement method for Contracts in excess of \$25,000.

(4) Section 4: Request for Proposals (RFP)

(A) Application

The decision to use Request for Proposals method shall be determined by the Procurement Specialist.

(B) Conditions for Use

Request for Proposals is an appropriate method for the Procurement of services of any dollar value, or when considerations other than price are of the essence and in the Judiciary's best interest.

(5) Section 5: Intergovernmental Cooperative Purchasing

(A) Application

The decision to use the Intergovernmental Cooperative Purchasing method shall be determined by the Procurement Specialist.

(B) Conditions for Use

An Intergovernmental Cooperative Purchasing Agreement is created when a public entity (such as the federal government, the State of Maryland, another state, a county, city or any other municipal entity) has solicited and awarded a Contract under competitive conditions resulting in competitive prices, terms, and conditions.

Use of Intergovernmental Cooperative Purchasing is appropriate when a public entity (such as the federal government, the State of Maryland, another state, a county, city or any other municipal entity) has solicited and awarded a Contract under competitive

conditions resulting in identical prices, terms, and conditions as stipulated in the Intergovernmental Cooperative Purchasing Contract; or, if the Vendor agrees to provide the Judiciary with more favorable prices, terms, and conditions than those provided in the Intergovernmental Cooperative Purchasing Contract, and the Judiciary desires to avail itself of the more favorable prices, terms, and conditions.

(6) Section 6: Sole Source Procurement

(A) Application

If the Procurement Specialist determines that a competitive source selection method cannot be used because certain Sole Source conditions exist, the Procurement Specialist, after obtaining all appropriate approvals, may Award a Contract without competition to the Sole Source.

(B) Conditions for Use

(i) The following circumstances may necessitate a Sole Source Procurement:

- (I) When only one source exists that meets the requirements;
- (II) When the compatibility of Equipment, accessories, services, software, or replacement parts is the paramount consideration;
- (III) When a sole Vendor's Item is needed for trial use or testing;
- (IV) When a sole Vendor's Item is to be procured for resale;
- (V) When certain public utility services are to be procured and only one reasonable source exists; or,
- (VI) When moving services to an alternative Vendor would cause undue hardship or excess costs to the Judiciary.

(ii) The Determination as to whether a Procurement shall be made as a Sole Source shall be made in writing by the Procurement Specialist, with the appropriate approval(s). The Procurement Specialist may specify the application of the Determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a Using Unit that a Procurement be restricted to one Vendor shall be accompanied by an acceptable explanation as to why no other Vendor shall be suitable or acceptable to meet the need.

(iii) Award or Renewal of Real Property Leases. When it is determined to be in the best interest of the Judiciary, the Procurement Specialist may negotiate the formation or renewal of a real Property Lease with the approval of the Director without soliciting other Proposals.

(7) Section 7: Emergency Procurement

The Director, or designee, with written approval of the Assistant State Court Administrator - Operations, may activate and proceed with Emergency Procurement Procedures as outlined within the Procurement Procedures Manual. Emergency Procurement Procedures may be updated and modified by the Director as required.

(d) ARTICLE IV. CONTRACT AWARD

(1) Section 1: Qualification and Duties

The Procurement Specialist, with the approval of the Director, or designee, has sole authority to determine that a Person is not a Responsible Bidder or Offeror, or that the Bid is nonresponsive, or the Proposal is not reasonably susceptible of Award.

(e) ARTICLE V. CONTRACT MODIFICATIONS, RENEWAL OPTIONS, EXTENSIONS, AND NOVATIONS

(1) Section 1: Contract Modifications

(A) Any proposed modification, notwithstanding the value of the modification, that would materially change the scope of a Contract previously approved by the Judiciary per Article I must be reapproved at the same approval level.

(B) As a general rule, goods or services that are outside the scope of a Contract must be procured through one of the source selection methods prescribed in this policy document rather than by modifying the existing Contract. To determine whether a proposed modification is outside the scope of the existing Contract, consider whether the modification could have affected the competition at the time the original Solicitation was issued.

(C) Procurement Specialists and contract managers should seek guidance from the Judiciary's Managing Legal Counsel, or designee, within the Administrative Office of the Courts, and the appropriate approval authority, when deciding if proposed work may be accomplished through a Contract Modification or if it requires a new Contract action.

(2) Section 2: Contract Renewal Options

(A) A valid Contract renewal Option is one where the Judiciary alone holds the power to exercise the Option, and the Option price is fixed in, or is objectively ascertainable under, the terms of the original Contract. Exercise of a renewal Option is not considered a Contract Modification. The Procurement Specialist may exercise a renewal Option before the expiration of the Contract.

- (B) Bid or Proposal Solicitation containing Options to extend must include the following:
 - (i) Statement that the Judiciary has the unilateral right to exercise any Option(s);
 - (ii) Time frame for the initial period of performance (initial term);
 - (iii) Number of and time periods covered by Option periods; and,
 - (iv) Notice that the original Bid/offer must set forth the pricing for both the initial term and the Option periods (or Option quantities).
- (C) Contracts containing Options must include the following:
 - (i) Statement that the Judiciary has the unilateral right to exercise any Option(s).
 - (ii) Time frame for the initial period of performance (initial term).
 - (iii) Number of and time periods covered by Option periods; and,
 - (iv) Pricing for both the initial term and the Option periods (or Option quantities).
- (D) The exercise of a Contract Option must be approved by the appropriate authority and renewed before the initial term, or before any previously renewed Option term expires. A Contract which has expired may not be reinstated through modification, or by the exercise of Options.

(3) Section 3: Extensions

Modifications to extend a Contract term are permitted only if it is extended before the term expires and the Procurement Specialist has received approval from the appropriate approval authority when the purpose is to:

- (A) Complete work under a task order issued before the Contract expires; or,
- (B) Provide the Judiciary time to complete the new Procurement, to resolve a protest, or to facilitate a successful transition between Contractors; or,
- (C) There are unspent funds remaining, in which case the Judiciary may extend a Contract, but not add funds, for a total period no longer than one-third of the base term of the original Contract, if the scope of work under the extension is the same as the original Contract.

(4) Section 4: Assignment/Novation/Name Change

(A) Assignment

A Judiciary Contract is not transferable, or otherwise assignable, without the written consent of the Procurement Specialist and approval of both the Director and the Managing Legal Counsel, or designee, within the Administrative Office of the Courts. However, a Contractor may assign monies receivable under a Contract after due notice to the Judiciary.

(B) Recognition of a Successor in Interest Novation

When it is in the best interest of the Judiciary, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee agree that:

- (i) The transferee assumes all of the transferor's obligations; and,
- (ii) The transferor waives all rights under the Contract against the Judiciary; and,
- (iii) Unless the transferor guarantees performance of the Contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(C) Change of Name

When a Contractor requests to change the name in which it holds a Contract with the Judiciary, the Procurement Specialist, upon receipt of a legally binding document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation) may enter into an agreement with the requesting Contractor to affect the change of name contingent upon the approval of the Director and the Managing Legal Counsel, or designee, within the Administrative Office of the Courts. The agreement changing the name specifically shall indicate that no other terms and conditions of the Contract are changed.

(f) ARTICLE VI. PROTESTS AND APPEALS

(1) Section 1: Protests

(A) Filing a Protest

- (i) An actual or prospective Bidder, Offeror, or Contractor who is aggrieved by the Solicitation or Award of a Contract, or by a Protest, may file a Protest with the Procurement Specialist identified in the specific Solicitation.
- (ii) The Protest shall be in writing and addressed to the specific attention of the Procurement Specialist.
- (iii) A Protest is considered filed when received in writing by the Procurement Specialist.

- (iv) The written Protest shall include the following information:
 - (I) The name and address of the Protestor;
 - (II) Appropriate identification of the Procurement;
 - (III) A statement of the reasons for the Protest; and,
 - (IV) Supporting exhibits, evidence, or documents to substantiate the reasons for the Protest.

(v) Filing of a Protest does not automatically stay the issuance of the Award.

(B) Time for Filing a Protest

- (i) A Protest based upon alleged improprieties or ambiguities in a Solicitation that are apparent before the Bid/Proposal due date shall be filed before the closing date and time for receipt of the initial Bids/Proposals.
- (ii) A Protest based upon alleged improprieties in a Solicitation that did not exist in the original Solicitation but which arose because of an amendment to the Solicitation shall be filed no later than the Solicitation closing date and time for receipt of Bids or Proposals identified in the amendment (or in the original Solicitation, if the opening date and time were not changed by amendment).
- (iii) In all other cases, Protests shall be filed no later than seven (7) calendar days after the basis for the Protest is known, or should have been known, whichever is earlier.
- (iv) The Protestor shall bear all costs associated with filing and prosecuting a Protest.

(C) Requests for Additional Information

The Procurement Specialist may request additional information in order to consider a Protest. The Protestor shall file the additional information with the Procurement Specialist within five (5) calendar days after receiving the request. Failure of any party to comply with a request by the Procurement Specialist for information or substantiation may result in a resolution of the Protest without consideration of any additional information.

(D) Confidentiality and Disclosability

Upon written request, the Procurement Specialist shall make available information submitted that bears on the substance of the Protest, except when information is confidential or otherwise is permitted or required to be withheld by law. The Procurement Specialist with the approval of the Director and, if necessary, in consultation with Legal Affairs will determine whether or not any information may be withheld in accordance with the Access to Judicial Records Title of the Maryland Rules.

(E) Decision

- (i) The Procurement Specialist, with the approval of the Director, shall issue a written decision on a Protest within thirty (30) Days after receiving all relevant information.
- (ii) The decision of the Procurement Specialist shall include:
 - (I) A description of the controversy;
 - (II) A statement of the decision, with supporting material; and,
 - (III) A statement that provides the Protester with the name and address of the Appeals Board, and that they have 7 days from the date of the decision to file an appeal.
- (iii) The Procurement Specialist shall furnish the written decision to the Protester and all other interested parties by any method that provides evidence of receipt.

(F) Appeals

- (i) A Protestor who wishes to appeal the decision of the Procurement Specialist on a protest shall submit a written appeal, addressed to the Appeals Board care of the Managing Legal Counsel, or designee, within the Administrative Office of the Courts, as identified in the notice to the Protester, within seven (7) Days after receiving the Procurement Specialist's written decision.
- (ii) The written appeal shall be expressly identified as an appeal and shall include:
 - (I) The name and address of the appellant(s);
 - (II) Appropriate identification of the Procurement; and,
 - (III) A statement of the reasons for the appeal, including all alleged error(s) of fact and/or law in the decision of the Procurement Specialist that is being appealed.
- (iii) The Appeals Board shall issue its decision within 90 days after the receipt of the appeal.
- (iv) The decision of the Appeals Board is final.

(g) ARTICLE VII. INSPECTION OF JUDICIARY PROCUREMENT DOCUMENTS

- (1) Pursuant to Maryland Rule 16-913(f), inspection of judicial records in the form of Procurement documents shall be governed exclusively by this Procurement Policy as approved by the Chief Judge of the Court of Appeals and posted on the Judiciary website. Procurement documents are presumed to be open to the public for inspection, except as otherwise provided by this policy.

- (2) The Director of Procurement, Contract & Grant Administration is the designated custodian for Judiciary Procurement documents. Confidential, proprietary information, and trade secrets furnished by a Bidder or Offeror under this section may be disclosed to the Legislative or Executive branches of Maryland State Government only when otherwise provided by law and may not be disclosed outside of Maryland State government. The Director, or designee, shall determine whether a Procurement document may be disclosable to the public, pursuant to a request under the Maryland Rules governing access to judicial records, in accordance with this Maryland Judiciary Procurement Policy. In some instances, documents may be disclosed subject to redactions listed in (3) below and subject to consultation with the Contractor. Procurement documents not specifically included in (3) may be subject to other privileges, statutes, or rules governing access to Judicial Records rendering them undisclosable to the public.
- (3) Categories of records; Disclosure:
- (A) The Procurement Procedures Manual shall not be available for public inspection.
 - (B) Contract Award Process: The custodian shall deny inspection of any record or part of a record concerning deliberations regarding the award of a Contract or Contracts.
 - (C) Financial information: The custodian shall deny inspection of a record that contains information about finances including, but not limited to, itemized pricing in Bids, Contracts, and Contract Modifications.
 - (D) Intergovernmental Cooperative Purchasing Agreements: A Contract, or the terms thereof, including pricing, and/or applicable discounts, between a Vendor and a governmental entity other than the Judiciary, that underlies an Intergovernmental Cooperative Purchasing Agreement between the Judiciary and the Vendor, shall not be available from the Judiciary for public inspection.
 - (E) Real Estate Leases: The custodian shall deny inspection of all or any part of real estate leases that contain pricing information or payment terms, or building Specifications, including but not limited to building security plans and standards.
 - (F) Safety and Security Information: The custodian shall deny inspection of any records or parts of records concerning the safety or security of Judiciary personnel, facilities, Equipment, networks, or data.
 - (G) Trade Secrets, Confidential Information: The custodian shall deny inspection of a Procurement record, or any part of a Procurement record, that contains trade secrets, confidential commercial information, confidential financial information, or confidential security information.
 - (H) The custodian may deny inspection of any record or part of a record that would not otherwise be available by law to a private party in litigation with the Judiciary.

- (l) The custodian may deny inspection of any bid or proposal that is not set forth or incorporated by reference in a contract entered into between the Judiciary and the Offeror that submitted the proposal, and that is not the basis for a Small Procurement that is more than \$2,500 but not more than \$25,000.

Approved:

/s/ Mary Ellen Barbera

November 4, 2020

Mary Ellen Barbera
Chief Judge, Court of Appeals

Date

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