

# PROCUREMENT, CONTRACT AND GRANT ADMINISTRATION

## 7.1 PROCUREMENT POLICY

### (a) ARTICLE I. GENERAL PROVISIONS

#### (1) Section 1: Authority

##### (A) Judiciary 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

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. The following delegations are made for contracts at and below \$500,000 in total value including renewal options:

- (i) 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.
- (ii) The Director of Procurement, Contract and Grant Administration (the Director), or designee, is delegated approval authority for all contracts with a value, including all renewal options, up to \$100,000. 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.
- (iii) 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.
- (iv) Renewals: As long as the total amounts of the contract remains within the delegated dollar value ranges, including any modifications, the Procurement Officer, after obtaining all appropriate approvals, may execute contract renewals.
- (v) 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.

##### (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 and its related units, the Court of Special Appeals, the District Court of Maryland, the Administrative Office of the Courts, the offices of the Clerks of the Circuit Courts, and Court-Related Agencies.

(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 defines 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; and,
- (iv) Agreements with entities that have legally recognized monopolies with whom the Judiciary must do business; [e.g., National Bar Examiners].
- (v) Real Property leases negotiated by DGS.

(C) Exceptions

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

(D) Procurement 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, and a representative from both the Office of the Clerk of the Circuit Courts and the District Court.
- (B) “Award” means the notification by the Department of Procurement, Contract and Grant Administration, after all required approvals have been obtained, of: (a) an executed contract; or, (b) written notice of award to the selected vendor.
- (C) “Bid” means a statement of price, terms of sale, and description of the materials, supplies or services offered by a bidder in response to an Invitation for Bids.

- (D) “Bid Board” means the electronic bulletin board displayed on the Judiciary procurement web site under “Open Procurements” and eMarylandMarketplace on which solicitations and related procurement information are posted.
- (E) “Business” means any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.
- (F) “Change Order” means a signed written order issued by the Department of Procurement, Contract and Grant Administration, directing a contractor to make changes within the scope of a contract.
- (G) “Commodity” means items such as goods and materials, including food and any other items needed to support normal operations.
- (H) “Competitive Bidding” means use of a procurement solicitation to obtain oral or written bids (including sealed bids) from vendors, or an Invitation for Bids.
- (I) “Contract” means a formal, written agreement entered into by the Judiciary for the acquisition of materials, supplies, and services.
- (J) “Contract Modification” means any written alteration in the specifications within the general scope of work, or other provision of any existing contract, but does not apply to the Judiciary’s exercise of its option to extend the term agreement.
- (K) “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.
- (L) “Corporate Purchasing Card” means a bank card issued to a Judiciary employee under the Judiciary’s Corporate Purchasing Card Program that may be used to purchase Category I small procurement requirements pursuant to the provisions of this section.
- (M) “Day” means calendar day, unless otherwise defined.
- (N) "Debriefing Request" means unsuccessful offeror's written request for proposal feedback to the procurement officer within 30 days of award.
- (O) “Determination” means a written decision made by a Procurement Officer related to the procurement process.
- (P) “Emergency” means a sudden and unexpected occurrence or condition which the Judiciary reasonably could not foresee and which requires an action to avoid or to mitigate serious damage to health, property, safety, or welfare.
- (Q) “Equipment” means property of a durable nature that retains its identity throughout its useful life, but does not include commodities, motor vehicles, or information technology

equipment (hardware and software).

- (R) “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.
- (S) “Evaluated Bid Price” means the dollar amount of a bid after price adjustments under objectively measurable criteria.
- (T) “Fund Availability” means funds that are contained within the proper object of expenditure within the Judiciary budget.
- (U) “Grant” means a defined amount of money that is awarded by or to a court, court-related agency, state or local government agency, institutions of higher education, community organization, or non-profit organization, which may be conditional, although without other consideration.
- (V) “Information Technology” means all electronic information processing hardware and software, including maintenance, telecommunications, and all associated consulting and support services.
- (W) “Invoice” means a contractor's written request for payment.
- (X) “Item” means supplies, commodities, services, and maintenance.
- (Y) “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.
- (Z) “Memorandum of Agreement” has the same meaning as “Memorandum of Understanding.”
- (AA) “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.
- (BB) “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 minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled, and is so certified by the Maryland Department of Transportation.
- (CC) “Most Advantageous,” when used in reference to a proposal received from an offeror, means the proposal that is determined to be most beneficial to the Judiciary considering price and evaluation criteria set forth in the request for proposal.
- (DD) “Most Favorable,” when used in reference to a bid received from a responsible bidder, means the bid that has the lowest bid price or lowest evaluated bid price, or the bid or evaluated bid

that yields the greatest revenue for the Judiciary under a revenue-producing procurement contract.

- (EE) “Multiple Award” means the award of contracts to more than one vendor for the same goods or labor.
- (FF) “Multi-Year Contract” means a contract that requires appropriations for more than one fiscal year.
- (GG) “Objectively Measurable Criteria” means standards, not matters of opinion or subjective judgment, that enable the Judiciary to compare the economy, effectiveness, and/or value of the subject of the solicitation including reliability, operational costs, maintainability, useful life, and/or residual value.
- (HH) “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.
- (II) “Oral Bid” means a bid proposed by a means other than by writing.
- (JJ) “Oral Solicitation” means the Procurement Officer's oral description of the procurement to a vendor who reasonably may be expected to provide the required item.
- (KK) “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.
- (LL) “Procurement” includes all functions that pertain to the process of buying, leasing, purchasing, or otherwise obtaining any materials, supplies, and services, including description of requirements, selection, and solicitation of sources, preparation and award of contract, as well as written determinations and findings pertaining to the procurement process.
- (MM) “Procurement Officer” means a person authorized by the Judiciary to conduct and oversee procurement activities.
- (NN) “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.
- (OO) “Published Solicitation” means the written description of the procurement via an electronic media generally available to the business community.
- (PP) “Purchase Order” is a purchaser's document issued by the Judiciary authorizing a procurement from a vendor.

- (QQ) “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.
- (RR) “Responsive” means a bid that conforms in all material aspects to the requirements contained in the Invitation for Bids.
- (SS) “Small Procurement” means the use of the procedures set forth in the Procurement Manual to obtain items reasonably expected by the Procurement Officer to cost \$25,000 or less.
- (TT) “Small Procurement Delegation” means that specific Judiciary employees may conduct procurement up to \$2,500, except for District Court, which is limited to \$500.
- (UU) “Sole Source” means that the Procurement Officer has determined that a competitive source selection method cannot be used because:
- (i) Only one source exists which meets the requirements;
  - (ii) The need for compatibility of equipment, accessories, or replacement parts is the paramount consideration;
  - (iii) A sole vendor's item is needed for trial use or testing;
  - (iv) A sole vendor's item is to be procured for resale.
- (VV) “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.
- (WW) “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.
- (XX) “Term Contract” means a standing blanket order agreement between a contractor and the Judiciary covering a specific time period through which the Judiciary may obtain a specified or unspecified amount of a supply, service, or maintenance.
- (YY) “Using Unit” means any Judiciary unit that uses any goods or labor procured under this policy.
- (ZZ) “Vendor” means a person who desires to enter or enters into a contract with the Judiciary.
- (AAA) “Written Solicitation” means the written description of an Invitation for Bids, Request for Proposals or a small procurement, or notice of its availability, furnished to a vendor who reasonably may be expected to provide the required item.

(4) Section 4: Principal Policies and Purposes:

The principal policies and purposes of Judiciary procurements are to:

- (A) Provide for increased public confidence in the procedures followed in Judiciary procurement;

- (B) Ensure the fair and equitable treatment of all persons who deal with the procurement system of the Judiciary;
- (C) Simplify, clarify, and modernize the regulations governing procurement by the Judiciary;
- (D) Permit the continued development of procurement regulations, policies, and practices;
- (E) Provide increased economy in Judiciary procurement activities and to maximize to the fullest extent the purchasing power of the Judiciary;
- (F) Provide safeguards for the maintenance of a procurement system of quality and integrity;
- (G) Foster effective broad-based competition through support of the free enterprise system; and,
- (H) Promote development of uniform procurement procedures.

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

(5) Section 5: Mandatory Written Solicitation Requirements

(A) Public Information Act Notice

A notice regarding the Maryland Public Information Act and the Access to Court Records Title of the Maryland Rules is a mandatory provision for all requests for proposals.

(B) Minority Business Enterprise Notice

A minority business enterprise notification is a mandatory provision for all solicitations as follows: "Minority business enterprises are encouraged to respond to this solicitation."

(C) Minority Business Enterprise Policy and Subcontract Participation Goal

All units of the Judiciary shall abide by the Judiciary's MBE policy. The policy can be found on the Judiciary's Department of Procurement, Contract and Grant Administration website.

(D) Arrearages

An arrearages clause is a mandatory provision for 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 and 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."

(E) 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.

(F) Conflict of Interest

Definition.

- (i) "Conflict of interest" means that, because of other activities or relationships with other persons:
  - (I) A person is unable or potentially unable to render impartial assistance or advice to the Judiciary;
  - (II) The person's objectivity in performing the contract work is or might be otherwise impaired; or,
  - (III) A person has an unfair competitive advantage.

(6) Section 6: Prohibitions

(A) Automatic Renewal Provisions

There shall be no automatic renewal provisions 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 Officer shall 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 on 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, 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, and which provides for the submission of equivalent products. Salient characteristics of the brand name item shall be set forth in the specification.

(2) Section 2: Responsibility for Preparation

The using unit shall be responsible for preparing the specifications. To the extent practicable, functional or 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 Officer, or designee, shall be responsible for reviewing the specifications for content, clarity, and completeness and to ensure that the specification is nonrestrictive. Final approval of the specifications shall rest with the Procurement Officer and subsequently with the Judiciary. Specifications may be revised by the Procurement Officer for purposes of clarification as long as elements of the specifications remain the same. Revisions which change the technical elements of the specification may be made in consultation with the Judiciary using entity.

## **(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 Officer shall determine the appropriate method of procurement. Solicitation content detail and procedures to be used for each method are found in the Judiciary Procurement Procedures Manual.

(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 Officer and application of dollar limits specified below.

- (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 Manual.

(B) Conditions for Use

- (i) Small procurements are for procurements of \$25,000 or less, and are classified in three categories:
  - (I) Category I Small Procurements-\$2,500 or less;
  - (II) Category II Small Procurements-More than \$2,500 but not more than \$10,000; and,
  - (III) Category III Small Procurements-More than \$10,000 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 Article, or a lesser category defined under of this section.

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

(A) Application

- (i) Use of the Invitation for Bids method shall be based on an initial decision by the Procurement Officer and application of dollar limits specified below.
- (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 Manual.

(B) Conditions for Use

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

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

(A) Application

- (i) Use of the Request for Proposals method shall be based on an initial decision by the Procurement Officer.
- (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 Manual.

(B) Conditions for Use

Request for Proposals (RFP) 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

- (i) Use of the Intergovernmental Cooperative Purchasing method shall be based on an initial decision by the Procurement Officer.
- (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 Manual.

(B) Conditions for Use

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 a favorable price and terms/conditions, and the Judiciary desires to avail itself of the favorable price and/or terms/conditions.

(6) Section 6: Sole Source Procurement

(A) Application

If the Procurement Officer determines that a competitive source selection method cannot be used because there is only one available source for the subject of the contract or certain other conditions exist, the Procurement Officer, after obtaining all appropriate approvals, may award a contract without competition to the sole source.

(B) Conditions for Use

- (i) Sole source procurement is not permissible unless a requirement is available from only a single vendor. The following are some examples of circumstances which could necessitate sole source procurement:
  - (I) When only one source exists which meets the requirements;
  - (II) When the compatibility of equipment, accessories, 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 source exists.
- (ii) The determination as to whether a procurement shall be made as a sole source shall be made in writing by the procurement officer, with the appropriate approval(s). The procurement officer 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 department that a procurement be restricted to one vendor shall be accompanied by an acceptable explanation as to why no other 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 State, the Procurement Officer may negotiate or approve the formation or renewal of a real property lease without soliciting other proposals.

(7) Section 7: Emergency Procurement

(A) Application

The Procurement Officer, with the consent of the Director, may proceed on an emergency procurement.

(B) Conditions for Use

Such a procurement is limited to the types of items and quantities of items necessary to avoid or to mitigate serious damage to health, property, safety, and welfare. Due to such an emergency condition, a procurement in any amount may be procured without the necessity of Invitation for Bids or a Request for Proposals in awarding or modifying a contract.

Subsequent to the end of any emergency, all appropriate approvals shall be obtained.

**(d) ARTICLE IV. CONTRACT FORMATION AND AWARD**

(1) Section 1: Qualification and Duties

(A) Responsible and Responsive

The Procurement Officer 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.

(B) Disclosure of Information

- (i) 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 State Government only when otherwise provided by law, and may not be disclosed outside of State government.
- (ii) Duty to Disclose Information
  - (I) After award, all bids and proposals shall be open to public inspection for the extent of the protest period, except for information that the Procurement Officer

considers to be confidential as a matter of law. A bidder or offeror is required to identify specifically those portions of its bid or offer that it believes is confidential as a matter of law. Unsuccessful bids and proposals and related information will not be retained after the expiration of the protest period.

## **(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 Officers 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 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 Officer may exercise a renewal option before the expiration of the contract.
- (B) Bid or proposal solicitations 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 any previously-renewed option term, expires. A contract which has expired may not be reinstated through modification, or the exercise of options.

(3) Section 3: Extensions

Modifications to extend a contract term are permitted only if extended before the term expires and the Procurement Officer has received approval from the appropriate 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 Officer 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, 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 shall agree that:

- (i) The transferee assumes all of the transferor's obligations;
- (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 Officer, 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 CLAIMS**

### **(1) Section 1: Protests**

#### **(A) Definitions**

For purposes of this section, the following terms have the following meanings:

- (i) “Protest” means a complaint relating to the solicitation or award of a procurement contract.
- (ii) “Protestor” means any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or the award of a contract, and who files a protest.

#### **(B) Filing a Protest**

- (i) An actual or prospective bidder, proposer, or contractor who is aggrieved by the solicitation or award of a contract, or by a protest, may file a protest with the Procurement Officer identified in the specific solicitation.
- (ii) The protest shall be in writing and addressed to the specific attention of the Procurement Officer.
- (iii) A protest is considered filed when received in writing by the Procurement Officer.
- (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.

#### **(C) Time for Filing**

- (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.
- (D) Requests for Additional Information

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

(E) Confidentiality and Disclosability

Upon written request, the Procurement Officer 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 Officer with the approval of the Director will determine whether or not any information may be withheld in accordance with the Maryland Public Information Act.

(F) Decision

- (i) The Procurement Officer, 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 Officer shall include:
  - (I) A description of the controversy;
  - (II) A statement of the decision, with supporting material;
  - (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 Officer shall furnish the written decision to the Protester and all other interested parties by any method that provides evidence of receipt.

(G) Appeals

- (i) A Protestor who wishes to appeal the decision of the Procurement Officer 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 Officer'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;
  - (III) A statement of the reasons for the appeal, including all alleged error(s) of fact and/or law in the decision of the Director that is being appealed.
- (iii) The decision process for appeals is as reflected in Section 1, paragraph .06, above.

## **(g) ARTICLE VII. SOCIO-ECONOMIC POLICIES**



(1) Section 1: Minority Business Enterprise Policy

All units of the Judiciary will abide by the Judiciary’s MBE policy. The policy can be found on the Judiciary’s Department of Procurement, Contract and Grant Administration website.

Approved:

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Mary Ellen Barbera  
Chief Judge, Court of Appeals

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Date