

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

C. Will vary by local school system and be driven by the Individualized Education Programs of each student eligible.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows:

Under the new regulation, students who are blind or visually impaired will have an assumed need for Orientation and Mobility instruction. If the Individualized Education Program team determines such instruction to be inappropriate, a qualified individual is required to conduct an orientation and mobility assessment to ensure current and future needs are addressed.

Opportunity for Public Comment

Comments may be sent to Carmen A. Brown, LCSW-C, Brach Chief, Interagency Collaboration, Division of Special Education/Early Intervention Services, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-7197 (TTY 410-333-6442), or email to carmen.brown1@maryland.gov, or fax to 410-333-1571. Comments will be accepted through August 21, 2017. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by State Board of Education during a public meeting to be held on September 19, 2017, 9:00 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.08 Individualized Education Program (IEP) Team Responsibilities.

A. IEP Development.

(1)—(5) (text unchanged)

(6) *Blind or Visually Impaired Students.*

(a) If a student is blind or visually impaired, the IEP team shall provide for instruction in:

(i) [braille] *Braille* and the use of braille, including textbooks in braille, unless the IEP team determines that instruction in braille is not appropriate for the student in accordance with 34 CFR §300.324(a)(2)(iii), Education Article, §8-408, Annotated Code of Maryland, and COMAR 13A.06.05.01[.]; and

(ii) *Orientation and mobility, unless the IEP team determines that instruction in orientation and mobility is not appropriate for the student in accordance with Education Article, §8-408, Annotated Code of Maryland, and §A(6)(b)—(d) of this regulation.*

(b) *If the IEP team determines that instruction in orientation and mobility is not appropriate for the student, the IEP team shall order an orientation and mobility assessment, consistent with guidelines established by the Department, that:*

(i) *Includes input from the student's parent or guardian;*

(ii) *Includes input from the student's classroom teacher;* and

(iii) *Takes into consideration the student's age, current and future needs, ability to function in familiar and unfamiliar areas, and ability to function under various lighting conditions.*

(c) *To be qualified to conduct an orientation and mobility assessment under §A(6)(b) of this regulation or provide orientation and mobility instruction, an individual shall:*

(i) *Hold a Bachelor's degree from an accredited college or university; and*

(ii) *Have completed any one of the credentialing options listed in §A(6)(d) of this regulation.*

(d) *Credentialing Options. To meet the credentialing requirement under §A(6)(c) of this regulation, an individual may:*

(i) *Hold a certificate as a Certified Orientation and Mobility Specialist (COMS) from the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP);*

(ii) *Hold National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB); or*

(iii) *Complete all requirements of a university-based program in orientation and mobility, including a supervised internship or externship in orientation and mobility.*

(7)—(11) (text unchanged)

B. (text unchanged)

KAREN B. SALMON, Ph.D.
State Superintendent of Schools

**Title 14
INDEPENDENT AGENCIES
Subtitle 28 CANAL PLACE
PRESERVATION AND
DEVELOPMENT AUTHORITY**

14.28.08 Procurement

Authority: Financial Institutions Article, §13-1008(4), Annotated Code of Maryland

Notice of Proposed Action

[17-184-P]

The Canal Place Preservation and Development Authority proposes to amend Regulations .02—.14 under COMAR 14.28.08 Procurement.

Statement of Purpose

The purpose of this action is to revise, update, and clarify the procurement regulations for the Canal Place Preservation and Development Authority (CPPDA).

With limited exceptions, the CPPDA is exempt from the regulations that govern procurement for most State agencies. (See Financial Institutions Article, §13-1027, Annotated Code of Maryland.) Instead, the CPPDA is required to have "written policies and procedures" governing procurement which cover issues including methods of procurement, advertising requirements, procurement goals, and approval processes. To this end, the CPPDA first adopted procurement regulations in 1995, which were last updated, in part, in 2009. A wholesale revision of the regulations has never occurred, and as the result the existing regulations are out-of-date, lack clarity in many respects, and are in some ways inconsistent with current best practices in procurement. Also, dollar thresholds for certain levels of

procurement authority and authorized procurement methods remain unadjusted for inflation and current operational realities. These revisions to the CPPDA's procurement regulations address these issues.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Paul Cucuzzella, Assistant Attorney General, Office of the Attorney General/ Maryland Department of Planning, 301 W. Preston St., 11th Floor, Baltimore, Maryland 21201, or call 410-767-1409, or email to paul.cucuzzella@maryland.gov, or fax to 410-697-9566. Comments will be accepted through August 21, 2017. A public hearing has not been scheduled.

.02 Scope and General Provisions.

A. This chapter does not apply to [the following]:

(1) — (3) (text unchanged)

(4) [Contracts] *Procurements* with [a] *an agency or unit of the federal [or] government, a State agency or unit, [or a] an agency or unit of a local jurisdiction, or an agency or unit of the government of another state;*

(5) — (6) (text unchanged)

(7) Agreements creating employee-employer relationships; [or]

(8) *An agreement entered into by the Authority to lease real property as lessor; or*

(9) A procurement made on behalf of a local jurisdiction if the:

(a) (text unchanged)

(b) Governing body of the local jurisdiction requests the Authority to waive its procedures[.]; and

(c) (text unchanged)

B. Except as provided in [Regulation .02A of this chapter] §4 of this regulation, this chapter applies to each expenditure of the Authority for the acquisition of supplies, services, or construction[, or professional services].

C. Exemptions.

(1) The Authority is generally exempt from the provisions of, and the regulation adopted under, State Finance and Procurement Article, Division II, Annotated Code of Maryland[, and the regulations adopted under Division II].

(2) The Authority is not exempt from the *Minority Business Participation provisions* of State Finance and Procurement Article, Title 14, Subtitle 3, [and], *Annotated Code of Maryland, or the regulations adopted under those provisions.*

D. Authority to Act.

(1) *Unless otherwise specified in the regulations of this chapter, the Membership of the Authority, the Executive Director, or the Executive Director's designee may undertake any action, determination, decision, or other exercise of authority that is directed, permitted, or contemplated by the regulations of this chapter.*

(2) *The Executive Director may delegate to an employee of the Authority any authority that the regulations of this chapter grant to the Executive Director.*

E. Procurement Records.

(1) *The Authority shall maintain a record for each procurement that includes all solicitations, bids or proposals, determinations, contracts, debriefing records, and other materials pertinent to the procurement.*

(2) *The Authority's record of a procurement shall be available for public inspection as provided for and limited by the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.*

(3) *The Authority may not disclose proprietary information submitted to the Authority in response to a solicitation, except as required by law.*

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(5) (text unchanged)

(6) "County" means any one of the 23 counties of the State and the Mayor and City Council of Baltimore, and any of its agencies or instrumentalities.

(7) (text unchanged)

(8) "Determination" means a written procurement decision made by [an official or employee of] the Authority [which is based upon written findings].

[(9) "Emergency" means a sudden and unexpected occurrence or condition which management of the Authority could not reasonably foresee and which requires an action to avoid or to mitigate damage to the environment, to health, safety, or welfare, or to Authority property.]

[(10)] (9) (text unchanged)

[(11)] (10) "Invitation for bids" means [any] a document used [for soliciting] to solicit bids.

[(12)] (11) "Local jurisdiction" means [any] a county or municipality[, or any of their agencies or instrumentalities].

(12) "Membership of the Authority" means the Membership of the Canal Place Preservation and Development Authority, as composed in accordance with Financial Institutions Article, §13-1005(a), Annotated Code of Maryland.

(13) "Municipality" means a municipal corporation in the State subject to the provisions of Article XI-E of the Maryland Constitution, and any of its agencies or instrumentalities.

(14) "Offeror" means a person who submits a proposal to the Authority.

[(14)] (15) "Person" means an individual, receiver, trustee, guardian, personal representative, corporation, partnership, association, unit of government, or any other entity.

[(15)] (16) "Procurement" includes all functions that pertain to the process of purchasing or otherwise obtaining supplies, services, or construction[, or leasing personal property as lessee].

[(16) "Procurement officer" means a person authorized to:

(a) Enter into or administer procurement contracts, or

(b) Make written determinations and findings with respect to procurement contracts.

(17) "Professional services" means services provided by architects, engineers, land surveyors, appraisers, accountants, financial advisors, attorneys, or other professional consultants.

(18)] (17) Proposal.

(a) "Proposal" means the response by an offeror to a request for proposals [to obtain supplies, services, or construction].

(b) (text unchanged)

[(19)] (18) "Request for proposals" means [any] a document used [for soliciting] to solicit proposals [from offerors].

[(20)] (19) "Responsible" means capable in all respects of dutifully performing all requirements [of a procurement contract] contained in a solicitation and having the integrity and reliability

[that can ensure] to assure good faith performance of the procurement contract.

[(21)] (20) "Responsive" means conforming in all material respects to the requirements contained in a solicitation.

[(22)] (21) "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, such as professional services provided by architects, engineers, land surveyors, appraisers, accountants, financial advisors, attorneys, or other professional consultants.

[(23)] "Sole source procurement" means a procurement for supplies, services, or construction that is available from only a single vendor.

[(24)] (22) "Solicitation" means an invitation for bids, a request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a procurement need of the [Authority's procurement needs] Authority.

[(25)] (23) (text unchanged)

.04 Contract Approval Authority.

A. Contract Approval. The authority to approve a procurement contract for the Authority, subject to the requirement of §B of this regulation, rests with:

(1) The Executive Director[:] for a procurement contract that is less than or equal to \$50,000; and

[(a)] Except as provided in §C of this regulation, shall approve procurement contracts of the Authority; and

[(b)] May delegate authority to approve a procurement contract of the Authority to an Authority employee.[]

(2) The Membership of the Authority for a procurement contract that exceeds \$50,000.

B. If the Authority estimates that a solicitation will result in the award of a procurement contract that exceeds \$50,000, the Membership of the Authority shall approve the solicitation for the procurement before issuance of the solicitation.

C. A procurement contract is [approved if the] not effective or enforceable against the Authority unless the procurement contract is:

[(a)] (1) [Authority approves the procurement contract as required in §C] Approved as authorized under §A of this regulation;

[(b)] (2) In writing, except as provided in Regulation .06F of this chapter regarding small procurements; and

(3) The Executive Director [or an employee of the Authority described in §A(1)(b) of this regulation] signs the procurement contract or otherwise expresses [the Executive Director's or the employee's] in writing the Authority's approval of the procurement contract [in writing].

[(3)] Except as provided in this regulation, a procurement contract is not enforceable against the Authority if the contract has not been approved as required in this regulation.

(4) Except as provided in Regulation .06E of this chapter:

(a) The procurement contracts of the Authority shall be in writing; and

(b) An oral contract purporting to bind the Authority is not enforceable against the Authority.

B.] D. The Executive Director shall report to the Membership of the Authority on any procurement contract [award] approved by the Executive Director as authorized under §A(1) of this regulation that is in an amount exceeding [\$15,000] \$25,000[, but less than or equal to \$35,000].

[C. Authority Approvals.

(1) If the Executive Director estimates that a procurement will result in the award of a procurement contract that exceeds \$35,000, the Authority shall first approve a solicitation notice for the procurement before distributing the notice.

(2) The Authority shall approve a procurement contract for more than \$35,000 before awarding the contract if:

(a) A solicitation notice was not approved for the contract as provided in §C(1) of this regulation; or

(b) The amount of the procurement contract award exceeds the Authority's estimate of the procurement by an amount specified by the Authority.]

.05 Determinations.

[Determinations] A determination required by [these regulations] this chapter shall be in writing [signed by the procurement officer.] and shall be retained by the Authority for not less than 3 years from the date of the determination.

.06 Methods of Procurement, Source Selection, and Solicitation.

A. [The] Authorized Methods of Procurement. All procurement contracts entered into by the Authority [may use] shall be awarded by one of the following procurement methods:

(1) Competitive sealed bidding in accordance with Regulation .07 of this chapter;

(2) Competitive sealed proposals in accordance with Regulation .08 of this chapter;

(3) Negotiated award after unsatisfactory competitive sealed bidding in accordance with Regulation .07I of this chapter;

(4) Sole source procurement in accordance with Regulation .09 of this chapter; [and]

(5) Small procurement in accordance with §F of this regulation; or

(6) Emergency procurement in accordance with Regulation .10 of this chapter.

B. Source Selection.

(1) The Authority may use small procurement for a procurement estimated by the Authority to be less than or equal to \$25,000.

(2) Competitive sealed bidding shall be the preferred method for any procurement estimated by the Authority to exceed \$25,000.

(3) For a procurement estimated by the Authority to exceed \$25,000, the Authority may use:

(a) Competitive sealed proposals if the Authority determines that:

(i) The procurement does not permit an award based solely on most favorable bid price or most favorable evaluated bid price;

(ii) Competitive sealed bidding is not practicable; or

(iii) Competitive sealed bidding is not advantageous to the Authority;

(b) Negotiated award after unsatisfactory competitive sealed bidding as authorized under Regulation .07I of this chapter;

(c) Sole source selection as authorized under Regulation .09 of this chapter; or

(d) Emergency procurement as authorized under Regulation .10 of this chapter.

[B.] C. — [C.] D. (text unchanged)

[D.] E. Notice of Solicitation.

(1) [The Authority shall distribute solicitation notices in a manner reasonably sufficient to provide general notice to potential bidders or offerors. The Authority shall issue solicitation notices in a reasonable time in advance of the date responses are due. The Authority may charge reasonable fees for the solicitation documents.

(2)] For a procurement estimated by the Authority to exceed [\$35,000] \$50,000, the Authority shall publish a notice of [the] solicitation:

(a) At least 10 days before the due date identified in the solicitation for receipt of bids or proposals;

(b) On the Authority's website; and

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(c) [in] In an appropriate publication [at least 10 days before the date bids or proposals are due].

[(3)] (2) For a procurement estimated by the Authority to [be more than \$15,000] exceed \$25,000, but to be less than or equal to [\$35,000] \$50,000, the Authority [may issue a] shall publish a notice of solicitation [notice by posting the notice on a solicitation board at]:

(a) At least 10 days before the due date identified in the solicitation for receipt of bids or proposals;

(b) On the Authority's [offices, or] website; and

(c) If determined necessary by the Authority, by any other reasonable method taking into consideration the [estimated amount] nature of the procurement.

(3) For a procurement estimated by the Authority to exceed \$10,000, but to be less than or equal to \$25,000, the Authority shall issue a notice of solicitation:

(a) In a manner reasonably sufficient to provide general notice to potential bidders or offerors; and

(b) Reasonably in advance of the due date identified in the solicitation for responses to the solicitation.

[E.] F. Small Procurement.

(1) For a procurement estimated by the Authority to be equal to or less than [\$7,500] \$10,000, the Authority may:

(a) [solicit any number of] Solicit oral bids from any number of bidders[.]; and

(b) [the Authority may enter] Enter into either a written or an oral [contracts] procurement contract.

(2) For a procurement estimated by the Authority to exceed [\$7,500] \$10,000, but to be less than or equal to [\$15,000] \$25,000, the Authority shall [obtain at least three written bids.]:

(a) Solicit bids as required by §E(3) of this regulation; and

(b) [the Authority may enter] Enter into [either] a written [or oral contracts] procurement contract.

.07 Procurement by Competitive Sealed Bidding.

A. [Applicability. This regulation applies to any procurement of the Authority except as provided in Regulations .06E and .08—10 of this chapter.

B.] Invitations for Bids. The Authority shall initiate a procurement by competitive sealed bidding by issuing an invitation for bids[. The invitation for bids shall include] that includes:

(1) The procurement specifications;

(2) [a written] A bid form [based upon the specifications.];

(3) [a] A statement to be executed by the bidder that the bidder agrees to all terms, [and] conditions, and provisions of, and any [addenda, if any,] amendments to, the invitation for bids[.];

(4) Instructions on bid submission requirements, including the due date and address for bid submission;

(5) [the] The time and place of bid opening[.]; and

(6) Any [such] other instructions or information requirements as the Authority [reasonably] considers necessary. [The Authority may require bidders to submit samples or descriptive literature.]

[C.] B. Prebid Conferences. The Authority may conduct prebid conferences[.] and [may] require [that] the attendance [by] of bidders [be mandatory].

C. Amendments to Initiations for Bids.

(1) The Authority may amend an invitation for bids by:

(a) Publishing the amendment in the same manner that the Authority published the invitation for bids; and

(b) Delivering the amendment to all prospective bidders known by the Authority to have either received the invitation for bids or expressed an interest in the invitation for bids.

(2) A prospective bidder who receives delivery of an amendment from the Authority shall acknowledge receipt of the amendment.

D. Bid Modifications and Withdrawal.

(1) A bidder may modify or withdraw a bid before bid opening by submitting written notice of modification or withdrawal to the Authority.

(2) The Authority shall return any bid security to a bidder if the bidder withdraws the bidder's bid in accordance with this [regulation] section.

E. Late Bids, Late Withdrawals, Late Modifications.

(1) The Authority may not consider a bid, bid withdrawal, or bid modification, received by the Authority after [the] bid opening [time and date], except that the Authority may consider a late bid, late withdrawal, or late modification, if the delay was substantially caused by the Authority. [The bidder is solely responsible for timely receipt of the bidder's bid.]

(2) (text unchanged)

F. Receipt and Opening of Bids.

(1) The Authority shall store bids and any bid modifications in a secure location before bid opening.

(2) The Authority may not disclose the identity of any bidder before bid opening.

(3) Bid opening shall occur at the date, time, and place identified in the invitation for bids.

(4) [An] At bid opening, an employee of the Authority shall open bids publicly, read the bids aloud, [and] record the bids, and [at the date, time, and place set for bid opening in the bid notice. Opened bids shall be available for public inspection to the extent required by State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. The Authority may not disclose proprietary information submitted by a bidder, except as required by law. Prices, makes, models, catalog numbers, delivery, and payment terms shall be made available for public inspection

(4) After bids have been opened, the Authority shall] prepare a bid tabulation.

(5) [A bidder shall acknowledge receipt of bid addenda] The Authority shall reject as nonresponsive any conditional bid.

G. Bid Mistakes.

(1) The [procurement officer] Authority may waive minor or technical irregularities in a bid if waiver is in the Authority's best interests.

(2) Before award, a successful bidder may be permitted to withdraw its bid if the bidder presents clear and convincing evidence to [the procurement officer] the Authority that:

(a) [an] An error has been made[, or if an error is obvious from the face of the bid documents.] in the bid; and

(b) The error is such that, had the error not been made, the bid as submitted would not have included the bid price or other material term.

(3) If an error, and the intended correction of [a bid] the error, are evident on the face of the bid documents, the bid shall be corrected and may not be withdrawn.

(4) After [procurement contract] award[.]:

(a) [a] A mistake in a bid may only be corrected if the Authority determines that it would be unconscionable not to permit correction[.]; and

(b) The Authority may not allow any change in price.

H. Bid Evaluation and Award.

(1) The Authority [procurement contract] shall [be awarded] award the procurement contract to the responsible bidder who [submitting] submits the most favorable [responsive] bid price or most favorable evaluated bid price.

[1.] (2) [Tie Bids.] If responsive tie bids are received from two or more responsible bidders, the Authority shall award the procurement contract in the same manner as provided in COMAR 21.05.02.14.

[J. Conditional Bids. The Authority shall reject as nonresponsive any conditional bid.

K.] *I. Procurement by Negotiated Award After Unsatisfactory Competitive Sealed Bidding.*

(1) The Authority may conduct discussions with bidders if, after bids have been opened:

(a) All bids are rejected [pursuant to] *under* Regulation .12 of this chapter;

(b) All bids [submitted result in] *included a bid* [prices] *price* in excess of funds available; or

(c) The [procurement officer, with the approval of the Executive Director.] *Authority* determines that all *bid* prices received are unreasonable as to one or more of the Authority's requirements and:

(i) There are no funds available to permit an award to the responsible bidder submitting the most favorable bid[.]; or

(ii) (text unchanged)

(2) [The] *If any of the circumstances in §I(1) of this regulation occurs, the Authority may:*

(a) [request] *Request that the bidders* [to] submit revised bids[.]; and

(b) [The Authority may conduct] *Conduct* discussions with bidders after revised bids have been submitted if the [procurement officer] *Authority* determines that [there is a compelling need for further discussions] *it is in the best interest of the Authority to do so.*

(3) [If there is more than one bidder, any] *Any* discussions conducted under this section concerning revised specifications or quantities shall be conducted with all responsible bidders.

(4) *The Authority shall award the procurement contract under this section to the responsible bidder who offered the most favorable bid price or most favorable evaluated bid price.*

.08 Procurement by Competitive Sealed Proposals.

A. Request for Proposals. *The Authority shall initiate a procurement by competitive sealed proposals by issuing a request for proposals that includes:*

(1) [A request for proposals shall include:

(a) The] *Information concerning proposal submission requirements, including the date, time, and place for submission of proposals;*

[(b) The proposal requirements, including price proposals;

(c)] (2) [The evaluation] *Evaluation* factors and the relative importance of each; [and

(d)] (3) A statement of the required scope of work or scope of services and performance schedule [required by the Authority.]; and

[(2)] (4) [A request for proposals may include] *Such* other information or requirements as the Authority [reasonably determines is] *may determine* necessary.

[(3)] B. *Preproposal Conferences.* The Authority may conduct preproposal conferences[.] and [may] require [that] *the* attendance by offerors [be mandatory].

C. *Amendments to Requests for Proposals.*

(1) *The Authority may amend a request for proposals by:*

(a) *Publishing the amendment in the same manner that the Authority published the request for proposals; and*

(b) *Delivering the amendment to all prospective offerors known by the Authority to have either received the request for proposals or expressed an interest in the request for proposals.*

(2) *A prospective offeror who receives delivery of an amendment from the Authority shall acknowledge receipt of the amendment.*

D. *Proposal Modification and Withdrawal.* An offeror may modify or withdraw a proposal before proposals are due by submitting written notice of modification or withdrawal to the Authority.

[B.] E. *Receipt and Opening of Proposals.*

(1) [A proposal, withdrawal, or modification received after the established due date and time, at the place designated for receipt of proposals, is late and may only be considered as provided for bids under Regulation .07E of this chapter.

(2)] *Proposals and modifications of proposals received by the Authority shall be held in a secure place until proposals are due.*

(2) *The Authority may open proposals at any time after proposals are due.*

(3) The Authority may not:

(a) [open] *Open* proposals publicly[.]; or

(b) [The Authority may not disclose] *Disclose* the contents of a proposal to any person other than a person responsible for evaluating or reviewing the proposal before procurement contract award. [The Authority may not disclose proprietary information submitted by an offeror, except as required by law.]

(4) *A proposal, withdrawal of proposal, or modification of proposal, received after proposals are due, is late and may only be considered as provided for bids under Regulation .07E of this chapter.*

[(3) An offeror shall acknowledge receipt of addenda in its proposal.]

[C.] F. *Proposal Evaluation.*

(1) The Authority shall evaluate proposals:

(a) [using] *Using* the evaluation factors set forth in the request for proposals[.]; and

(b) *For a determination of which proposal is most advantageous to the Authority.*

(2) *Technical proposals and price proposals shall be evaluated independently [of one another].*

(3) (text unchanged)

[D.] G. *Discussions.*

(1) [The Authority may conduct discussions with qualified offerors. A] *As used in this section and in §E of this regulation, a "qualified offeror" is an offeror who submits a proposal in response to a request for proposals that [is determined by the procurement officer] the Authority determines is [to be] reasonably susceptible [to] of being selected for award of the procurement contract [award].*

(2) *The Authority may conduct discussions with a qualified offeror to:*

[(2) Discussions with qualified offerors may be held to:]

(a) [Ensure] *Assure* that the offeror has full understanding of the Authority's requirements;

(b) [and] *Assure* that the Authority had full understanding of the offeror's proposal and ability to perform;

[(b)] (c) [Obtain] *Negotiate* the best price or other contract terms for the Authority; [and] or

[(c)] (d) Facilitate [arrival at] a procurement contract that is most advantageous to the Authority, taking into consideration price and other relevant evaluation factors set forth in the request for proposals.

(3) The Authority shall treat qualified offerors fairly and equally with respect to [any] opportunity for discussions[, negotiations, or clarification of proposals].

[E.] H. *Best and Final Offers.* [The procurement officer]

(1) *The Authority may [permit a] request that each qualified [offerors] offeror [to revise their initial proposals by submitting] submit a best and final [offers] offer if the Authority determines that it is in the Authority's best interest to do so.*

(2) The Authority may:

(a) [require] *Require* more than one series of submissions of best and final offers; and

(b) *Engage* in discussions on a best and final offer in accordance with §D of this regulation.

(3) If the Authority requests more than one submission of best and final offers [is requested] and an offeror does not submit an offer in response to a request, the offeror's immediate previous offer shall be [construed as its] considered by the Authority as the offeror's best and final offer unless the offeror submits a timely notice of withdrawal of that immediate previous offer.

[F.] I. Procurement Contract Award. [Upon completion of] After completing all discussions and [negotiations] evaluations, the [procurement officer] the Authority shall:

(1) [make a determination] Determine [recommending award of the procurement contract to the responsible offeror whose] which proposal is [determined to be the] most advantageous to the Authority[.];

(2) Award the procurement contract based on the determination; and

(3) [The procurement officer shall] After award, promptly notify all unsuccessful offerors [of the recommended procurement contract award].

[G.] J. Debriefing of Unsuccessful Offerors.

(1) [When] If a procurement contract is [to be] awarded on some basis other than price alone, an unsuccessful offeror may [be debriefed upon the offeror's], within 10 days of the unsuccessful offeror's receipt of notification of the award, submit to the Authority a written request [submitted to the procurement officer within 10 days after the offeror has knowledge that the procurement contract is to be awarded to another offeror] for a debriefing from the Authority. [Debriefings shall be conducted by a procurement official familiar with the rationale for the selection decision and procurement contract award.]

(2) [Debriefing] A debriefing shall:

(a) Be conducted by an employee of the Authority who is familiar with the Authority's evaluation and determination on the procurement;

[(a)] (b) Be limited to discussion of the unsuccessful offeror's proposal and the Authority's evaluation of the proposal;

(c) [and may not include any discussion of a competing offeror's proposal];

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

[(c)] (d) Provide information on areas in which the Authority considered the unsuccessful offeror's technical proposal [was considered] to be weak [or], deficient, or less competitive.

(3) [Debriefing] A debriefing may not include:

(a) Discussion of a competing offeror's proposal; or

(b) [discussion] Discussion or dissemination of the thoughts, notes, or rankings of individual members of an evaluation committee[, but may include a summary of the procurement officer's rationale for the selection decision and recommended procurement contract award].

(4) A summary of the debriefing shall be made a part of the procurement contract file.

.09 Sole Source Procurement.

A. [Conditions for Use] Applicability. The Authority may award a procurement contract to a sole source without competition:

(1) [Except as provided in §B of this regulation, sole source procurement is not permissible unless] When a requirement is available from only a single source or vendor[.]; or

(2) [The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer and approved by the Executive Director. The determination and the basis for the determination shall be in writing. The Authority may not award a procurement contract to a sole source before the Executive Director's approval.

B. Confidential Services. The Authority may enter into a sole source procurement contract to] To retain [the] confidential services [of a contractor]:

(1) (text unchanged)

(2) For the appraisal of real property contemplated for acquisition by the Authority.

C. Determination. A determination to make a procurement by sole source without competition shall be made by the Executive Director based on a finding that a sole source procurement is in the Authority's best interest.

.10 Emergency Procurement.

A. [Application] Applicability. The [procurement officer, with the prior approval of the Executive Director,] Authority may award [an emergency procurement] a contract by emergency procurement when:

(1) There occurs a sudden and unexpected event or condition that the Authority did not reasonably foresee; and

(2) Due to the constraints of time, procurement by other than competitive sealed bidding or competitive sealed proposals [under Regulation .07 or .08 of this chapter.

B. Scope. An emergency procurement is limited to the procurement of those requirements] is necessary to avoid or mitigate damage to the environment[, or] to public health, safety, or welfare.

[C.] B. [Competition] Determination. The determination to make an emergency procurement shall be made by the Executive Director.

C. Contract Award. When making an award by emergency procurement, [The] the Authority shall:

(1) [reasonably] Reasonably attempt to obtain [such competition as is] competitive bids or proposals consistent with meeting the time requirements of the emergency; and

(2) Make the award that is most advantageous to the Authority considering the circumstances of the emergency.

.11 Contract Award and Formation.

A. The [procurement officer] Authority shall [determine whether a bidder or offeror is responsible] award a procurement contract only to an offeror or bidder who is responsible and responsive, as determined by the Executive Director.

B. The [procurement officer] Executive Director may [find] determine that a bidder or offeror is not [a] responsible if the Executive Director finds that the bidder or offeror [for]:

(1) [Unreasonable failure by the bidder or offeror] Unreasonably failed to promptly supply information [promptly] requested by the Authority in connection with a determination of responsibility [under this chapter]; or

(2) [Any other reason indicating that the bidder or offeror does] Does not have the:

(a) Capability in all respects to perform fully the procurement contract requirements[.]; or

(b) Integrity and reliability that will ensure good faith performance.

C. [The procurement officer shall determine whether a bid or proposal is responsive. A responsive bid or proposal contains a definite unqualified offer to perform in accordance with the terms of the solicitation.

D. The] A procurement contract shall be:

(1) (text unchanged)

(2) Approved for legal sufficiency by an assistant attorney general of the State.

[E.] D. For a procurement [contracts which exceed \$10,000] contract that exceeds \$10,000, the [procurement] contract shall contain the provisions required by COMAR 21.07.01—21.07.03[.

F. The Executive Director may amend or delete any provision required by Regulation .11E of this chapter as the Executive

Director], as may be amended or deleted by the Authority as it considers necessary to further the business of the Authority.

.12 Cancellation [or] of Solicitations and Rejection of [Solicitations] Bids and Proposals.

A. The Authority may cancel a solicitation in whole or in part before opening of bids or proposals when, in the determination of the [procurement officer] *Executive Director*, cancellation is in the best interests of the Authority. Bids or proposals shall be returned to the bidders or offerors together with a notice of cancellation.

B. After opening of bids or proposals, the Authority may reject all bids or proposals [in whole or in part] when, in the determination of the [procurement officer] *Executive Director*, rejection is in the best interests of the Authority. Notice of rejection of all bids or proposals shall be sent to all vendors who submitted bids or proposals.

C. [Determination of the reason for cancellation or rejection shall be made part of the procurement file.

D.] The Authority may reject a bid or proposal in whole or in part when it is in the Authority's [reasonable] best interest to do so[. Reasons] and for reasons that may include, but are not limited to, [the following] a determination that:

- (1) (text unchanged)
- (2) The bid or proposal is not responsive [or];
- (3) [the] The proposal is not reasonably susceptible to being selected for award;

[(3)] (4) [The] A bid or proposal price or other term is not reasonable; or

[(4)] (5) (text unchanged)

[E. Opened bids or proposals shall be retained in the procurement file. Unopened bids or proposals shall be returned to the bidder or offeror, or otherwise disposed of by the Authority.]

.13 Disputes.

[Disputes arising] A dispute that arises in the performance of [the] a procurement [contracts] contract which [are] is not resolved by agreement of the parties shall be decided in writing by [an authorized representative of] the Executive Director. The decision of the Executive [Director's authorized representative] Director is final and conclusive unless, within 10 calendar days of receipt of a copy of the decision, the contractor delivers a written appeal to the Executive Director. In connection with an appeal, the contractor shall be [afforded] given an opportunity to be heard and to offer [binding] evidence in support of the contractor's position. The decision by the Executive Director [is binding upon] binds the contractor, and the contractor shall abide by the decision.

.14 Minority Business Enterprise Policies.

The Authority shall comply with the provisions of State Finance and Procurement Article, Title 14, Subtitle 3, Annotated Code of Maryland, and regulations adopted under those provisions.

DEIDRA L. RITCHIE
Executive Director

**Title 15
DEPARTMENT OF
AGRICULTURE**

**Subtitle 01 OFFICE OF THE
SECRETARY**

15.01.11 Industrial Hemp

Authority: Agriculture Article §14-102(c), Annotated Code of Maryland

**Notice of Proposed Action
[17-192-P]**

The Secretary of Agriculture proposes to adopt new Regulations .01—.10 under a new chapter. COMAR 15.01.11 Industrial Hemp.

Statement of Purpose

The purpose of this action is to explain the Department of Agriculture's certification program to grow or cultivate industrial hemp that is restricted to an institution of higher education for the sole purpose of agricultural academic research.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This action will have an unknown economic impact, mostly in staff-time costs, by both the Department of Agriculture and an institution of higher education that applies to be certified to grow or cultivate industrial hemp.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	Unknown
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unknown

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Unknown costs to the Department of Agriculture will depend on the number of applications and will include salary costs for staff to review applications and inspect certified sites for regulatory compliance.

D. Unknown costs to a certified institution of higher education will include staff costs, laboratory test fees and costs to comply with regulatory requirements including security requirements.

F. The public may benefit from the research performed by an institute of higher education on the uses for industrial hemp.