

MARYLAND PRESCRIPTION DRUG AFFORDABILITY BOARD

PROCUREMENT POLICIES & PROCEDURES

I. Introduction

A. These Procurement Policies & Procedures are intended to establish an open and transparent procurement process for the Maryland Prescription Drug Affordability Board (the “Board” or “PDAB”) that (1) promotes public confidence in the Board’s procurements; (2) ensures the fair and equitable treatment of all persons and entities that participate in the Board’s procurement system; (3) fosters appropriate competition and provides safeguards for maintaining a procurement system of quality and integrity; (4) promotes increased economic efficiency and responsibility on the part of the Board; (5) achieves the maximum benefit from the Board’s purchasing power; and (6) provides clarity and simplicity in the rules and procedures governing the Board’s procurements.

B. Under § 21-2C-03 of the Health-General Article of the Maryland Code, the Board is subject to the provisions of State law governing procurement by “exempt units,” *see* Md. Code Ann., State Fin. & Proc. Tit. 12, subd. 4, and establishing requirements and guidelines for minority business participation in procurement, *id.*, Tit.14, subd. 3. These Procurement Policies & Procedures, and the applicable provisions of State law, govern all procurements undertaken by the Board.

II. Selection of Procurement Method

A. All procurements by the Board shall be awarded by one of the following methods:

1. Competitive Sealed Bidding
2. Competitive Sealed Proposals
3. Expedited Procurement
4. Emergency Procurement
5. Sole Source Procurement
6. Simplified Methods for Small Procurements
7. Inter-Governmental Procurement
8. Master Contracting

B. Subject to the limitations set forth below, the Executive Director of the Board shall have authority to select the method of procurement that best serves the needs of the Board and achieves the purposes of these Procurement Policies & Procedures.

III. Methods of Procurement

A. Competitive Sealed Bidding.

1. Competitive sealed bidding is a competitive method of procurement and shall be used where (a) the award will be made on the basis of price and other price-related

factors, (b) it will not be necessary to conduct negotiations with offerors, (c) time permits the solicitation, submission and evaluation of sealed bids, and (d) there is a reasonable expectation of receiving more than one bid.

2. Each invitation for bids shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of bids, and shall identify the factors on which the contract will be awarded.

3. Each invitation for bids shall be advertised in any reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit bids directly from any vendor.

4. The Executive Director shall ensure that there is reasonable time, after publication of an invitation for bids, for potential bidders to prepare and submit bids.

5. Prequalification of bidders may be required.

6. Bids must be submitted either in a sealed envelope marked with the bidder's name or electronically to PDAB's designated e-mail address. All bids shall be publicly opened at the time and place stated in the request.

7. Contracts shall be awarded with reasonable promptness after the date of bid opening according to the process established in the invitation for bids and based on the factors identified in the invitation for bids.

8. All bids may be rejected if the Board or the Executive Director determines that it is in the Board's best interest to do so.

B. Competitive Sealed Proposals.

1. Competitive sealed proposals is a competitive method of procurement and may be used where the award will be made on factors that include but are not limited to price, and where time permits the solicitation, submission and evaluation of sealed proposals.

2. Each request for proposals shall be in writing, shall be in a form approved by the Executive Director, shall establish a process for the evaluation of proposals, and shall identify the factors on which the contract will be awarded.

3. Each request for proposals shall be advertised in any reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or a procurement officer designated by the Executive Director. The Executive Director or designated procurement officer may solicit proposals directly from any vendor.

4. The Executive Director shall ensure that there is reasonable time, after publication of a request for proposals, for potential offerors to prepare and submit proposals.

5. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of proposals. The person conducting the discussions or negotiations shall keep a record of all such communications and shall treat all offerors fairly in conducting discussions or negotiations.

6. The Executive Director or designated procurement officer may request that offerors revise their proposals by submitting a best and final offer or a series of best and final offers.

7. Contracts shall be awarded according to the process established in the request for proposals and based on the factors identified in the request for proposals.

8. All proposals may be rejected if the Board or the Executive Director determines that it is in the Board's best interest to do so.

C. Expedited Procurement.

1. Expedited procurement is a competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director that urgent circumstances make it impractical for a procurement to be undertaken through more formal competitive procurement methods.

2. The urgent circumstances under which an expedited procurement may be undertaken include the need to make progress toward compliance with long-range deadlines set forth in federal or State law, in policy guidance from a federal or State agency, or in the terms of a grant received by the Board, where the use of more formal procurement methods would prevent the Board from making adequate progress toward compliance.

3. Each solicitation shall be in writing and shall be in a form approved by the Executive Director.

4. Each solicitation shall be advertised in any reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designated procurement officer. The Executive Director or designated procurement officer may also solicit responses directly from any vendor.

5. The Executive Director shall ensure that responses are received and evaluated in the manner best suited to maximize competition and transparency, consistent with the urgent circumstances presented.

6. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of responses. The person conducting the discussions or negotiations shall keep a record of all such communications and shall attempt

to treat all offerors fairly in conducting discussions or negotiations, consistent with the urgent circumstances presented.

7. Contracts shall be awarded according to any process established in the solicitation and based on any factors identified in the solicitation, and, in any event, to the offeror whose response is deemed most advantageous to the Board under the urgent circumstances of the procurement.

8. All responses may be rejected if the Board or the Executive Director determines that it is in the Board's best interest to do so.

D. Emergency Procurement.

1. Emergency procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that it is not possible to undertake a competitive procurement because of an emergency requiring the Board to (a) protect the public health, safety or welfare; (b) preserve or protect the Board's property or systems; or (c) mitigate a threat to the continuation of services provided by the Board.

2. An emergency procurement shall be limited to the procurement of only the types and quantities of goods or services needed to meet the immediate emergency and shall not be used to meet long-term requirements.

3. The Executive Director, or a procurement officer designated by the Executive Director, shall solicit responses from as many vendors as practicable and shall ensure that any emergency procurement is undertaken with the maximum amount of transparency consistent with the circumstances of the emergency.

4. The Executive Director or designated procurement officer shall seek the most favorable price and the most favorable terms and conditions that can be obtained under the circumstances of the emergency.

5. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Board under the circumstances of the emergency.

E. Sole Source Procurement.

1. Sole source procurement is a non-competitive procurement method and may only be used after a written determination, by the Executive Director or a procurement officer designated by the Executive Director, that there is only one source for goods or services that the Board requires.

2. If the Executive Director determines that it is in the best interest of the Board, the procurement officer or Executive Director may negotiate the renewal of an existing real property lease without soliciting other proposals.

3. The Executive Director shall ensure that sole source procurement is used only in circumstances in which it is both necessary and in the best interest of the Board.

4. The Executive Director or designated procurement officer shall use a letter to request a proposal for a sole source procurement. The letter shall refer to, or attach, the terms and conditions of a proposed contract.

5. The Executive Director or designated procurement officer shall negotiate with the source of the procurement for the most favorable price and the most favorable terms and conditions that can be obtained.

6. A contract may be awarded where, based on the negotiated price and terms and conditions, it is in the best interest of the Board to award the contract.

7. The Executive Director or designated procurement officer shall take action whenever possible to avoid the need to continue to procure the same goods or services without competition.

F. Simplified Methods for Small Procurements.

1. **Contracts Less than \$100,000.** For contracts estimated to be valued at less than \$100,000, a simplified competitive method may be used that does not incorporate all of the elements of a formal competitive procurement.

2. Each solicitation shall be in writing and shall be in a form approved by the Executive Director or a procurement officer designated by the Executive Director.

3. Each solicitation shall be advertised in any reasonable manner that would promote competition and transparency in the procurement process as determined by the Executive Director or designated procurement officer. The Executive Director or designated procurement officer may solicit responses directly from any vendor.

4. The Executive Director shall ensure that responses are received and evaluated in a manner that promotes competition and transparency and that is fair to all offerors.

5. The Executive Director or designated procurement officer may conduct discussions or negotiations with any offeror after the receipt of responses and shall attempt to treat all offerors fairly in conducting discussions or negotiations.

6. Contracts shall be awarded to the offeror whose response is deemed most advantageous to the Board.

7. All responses may be rejected if the Executive Director determines that it is in the Board's best interest to do so.

8. **Contracts less than \$15,000.** For contracts valued at less than \$15,000, competitive selection is preferred, but not required. For such contracts, the procurement shall be considered a competitive procurement if the Executive Director, or a procurement officer designated by the Executive Director, orally solicits and obtains responses from at least two vendors. The Executive Director may award a contract when it is in the best interest of the Board to do so.

9. Contracts may not be artificially divided for the purpose of bringing them within the dollar ranges in which these Procurement Policies & Procedures permit the use of simplified procurement methods.

G. Inter-Governmental Procurement and Cooperative Purchasing.

1. When it is in the best interest of the Board, the Board may, without competition, enter into an agreement to procure goods or services from an agency or unit of (a) the State of Maryland, (b) a political subdivision of the State of Maryland, (c) the federal government, or (d) another state government.

2. When it is in the best interests of the Board, the Board may, without competition, enter into an inter-governmental cooperative purchasing agreement, as that term is defined in § 13-110(a)(4)(i) of the State Finance and Procurement Article.

3. Any inter-governmental agreement described in this Paragraph II.G valued at more than \$25,000 may be approved only by vote of the Board. The Executive Director shall have authority to approve any such agreement valued at \$25,000 or less.

H. Master Contracting.

1. The Board may use master contracting, a streamlined procurement method, to provide for the qualification of an offeror in one or more categories of services, supplies, or commodities.

2. Each solicitation utilizing the master contracting method shall include: (a) the categories of services, supplies, or commodities in which an offeror may submit a proposal for qualification; (b) the procedure the Board will use to consider qualification and award of multiple responsible offerors in each category of services, supplies, or commodities; and (c) a requirement that all offerors the Board determines to be responsible and qualified for one or more categories of services, supplies, or commodities execute a standard contract for a specified period of time between the Board and the offeror and (d) a description of the process the Board will utilize to (i) solicit proposals from master contractors for services, supplies or commodities and (ii) award task orders.

3. Each solicitation for a task order shall include a statement of the: (a) factors that will be used in evaluating a master contractor's response; and (b) relative importance of each factor.

4. If the Board expects that the total cost of the services, supplies, or commodities will exceed \$ 100,000, the Executive Director or procurement officer shall issue a solicitation for a task order to all master contractors in the appropriate category established by the Board.

5. If the Board expects that the total cost of the services, supplies, or commodities will be \$ 100,000 or less, the procurement officer may either issue a solicitation for a task order to (a) all master contractors in the appropriate category established by the Board or, where the procurement officer determines it is in the best interest of the Board (b) a minimum of six qualified master contractors in the appropriate category established by the Board.

6. After the Board receives responses from master contractors to a solicitation for a task order, the unit shall evaluate the responses and may select one or more master contractors for award of a task order based on the response(s) determined to be the most advantageous to the Board considering the evaluation factors set forth in the task order request for proposal. Where the Board seeks individuals to perform services under a task order, the Board may style a task order request for proposal as a “request for resumes.”

7. Neither the solicitation of proposals for a task order nor the award of a task order to a master contractor shall be subject to a bid protest.

IV. Contract Approval Authority and Reporting Requirements

A. The Executive Director shall have authority to award any contract valued at \$25,000 or less; any contract valued at more than \$25,000 may only be awarded by vote of the Board.

B. Where the emergency procurement method has been properly utilized, the Executive Director shall obtain prior approval of the Board before awarding the contract.

C. The Executive Director shall report to the Board, at the next regular meeting of the Board following the award of any contract the award of any contract valued at \$15,000 or more.

D. The Executive Director shall report to the Board, at the next regular meeting of the Board, following the award to a Master Contractor of any task order: (a) the Master Contractor(s) to which any task order has been awarded, and (b) the amount of the task order awarded to the Master Contractor(s).

V. Minority Business Participation

A. All procurements shall comply with Title 14, Subtitle 3 of the State Finance and Procurement Article, which governs minority business participation in procurement.

B. The Executive Director shall designate a liaison officer for minority business participation, who shall coordinate agency outreach to the minority business community and

review the Board's contracting to ensure compliance with the law governing minority business participation.

VI. Contract Requirements

A. All contracts shall be in writing and shall be in a form approved by the Executive Director. Contracts valued at less than \$15,000 may be in the form of a purchase order.

B. Term contracts, except for real property leases, are limited to a maximum initial term of three years, with renewal options for a maximum combined total of five years.

C. Real property leases are limited to a maximum initial term of five years with renewal options for a maximum combined total of ten years.

D. All contracts valued at \$15,000 or more shall include a provision stating that contracts awarded in violation of these Procurement Policies & Procedures shall be voidable at the election of the Board.

E. The Board may from time to time identify additional mandatory provisions for all contracts or for certain categories of contracts and may do so either by amending these Procurement Policies & Procedures or by adopting a separate policy concerning contract terms.

VII. Contract Modifications

The Executive Director, or a procurement officer designated by the Executive Director, may agree on behalf of the Board to modify the terms of a contract. The Executive Director may, without prior approval of the Board, agree to any contract modification valued at \$25,000 or less. All other contract modifications valued at more than \$25,000 require prior approval of the Board.

VIII. Bid Protests

A. Time Restrictions.

1. A protest based upon alleged improprieties in a solicitation that are apparent before bid opening or the closing date for receipt of proposals must be submitted to the Executive Director before bid opening or the closing date for receipt of proposals.

2. In all other cases, protests must be submitted to the Executive Director not later than seven calendar days after the basis for protest is known, or should have been known, whichever is earlier.

B. Form and Content of Protest.

1. Any protest must be submitted in writing and must be addressed to the Executive Director.

2. Any protest must include the name and address of the protestor; appropriate identification of the procurement; a statement of the reasons for the protest; and supporting exhibits, evidence, or documents to substantiate the reasons for the protest.

C. Decision of Executive Director or Procurement Officer.

1. The Executive Director may deny any bid protest (a) received after the time periods set forth in Paragraph VIII.A, or (b) lacking the required elements set forth in Paragraph VIII.B.

2. With regard to all other bid protests, the Executive Director or a procurement officer designated by the Executive Director shall resolve the protest.

3. The Executive Director or designated procurement officer (a) may notify other interested parties of the existence of the protest and may obtain the views of other interested parties, and (b) may conduct discussions or negotiations with the protestor or with other interested parties and attempt to resolve the protest by agreement.

4. The Executive Director or designated procurement officer shall issue a written decision resolving any bid protest that cannot be resolved by agreement.

5. For bid protests associated with contracts valued at less than \$100,000, or with a procurement in which the contract is reasonably anticipated to be valued at less than \$100,000, the decision of the Executive Director or designated procurement officer is final.

D. Appeal.

1. Except in cases where, as set forth above, the decision of the Executive Director or designated procurement officer is final, a protestor may appeal from the decision of the Executive Director or designated procurement officer to the Board.

a. The appeal must be in writing, be addressed to the Chair of the Board, identify each ground on which the protestor claims that the protest was resolved in error, and include a copy of the initial protest and the decision of the Executive Director or designated procurement officer resolving the protest.

b. Appeals must be received or postmarked within ten calendar days after issuance of the decision resolving the protest.

c. Six copies of all required materials must be submitted.

2. The Board may deny any appeal (a) received after the time periods set forth in Paragraph VIII.D.1, or (b) lacking the required elements set forth in Paragraph VIII.D.1.

E. Hearing on Appeal

1. The Board may determine that a hearing would assist in the resolution of any appeal. The Board may elect to hold the hearing itself or may refer the matter for a hearing

and proposed decision to a member of the Board, to a panel consisting of two or more members of the Board, or to another impartial decision-maker, such as the Office of Administrative Hearings.

2. The Board may adopt procedures governing hearings conducted under these Procurement Policies & Procedures.

3. A final decision resolving the appeal will be issued by vote of the Board.

F. Award Pending Protest.

The Board may vote to award a contract before there is a final decision of the Board resolving a bid protest. Otherwise, a contract shall not be awarded during the pendency before the Board of a bid protest related to that contract.

G. Resolution of Protest.

In resolving a bid protest, the Board, Executive Director or designated procurement officer may (a) deny the protest, (b) sustain the protest but nonetheless determine that the procurement should proceed, consistent with Paragraph IX.B, below, or (c) sustain the protest and declare a contract to be void, order that all bids be re-evaluated for award, order that a solicitation be re-issued, or require that any other action be taken that fairly addresses the protest.

IX. Contracts Voidable for Noncompliance

A. If the Board or a person with authority to award a contract under these Procurement Policies & Procedures finds that a procurement violates these Policies & Procedures, or that a contract has been awarded in violation of these Policies & Procedures, the Board or person with authority may order that any action be taken to resolve the violation and may declare void a contract awarded in violation of these Policies & Procedures.

B. Alternatively, the Board or person with authority may determine that a procurement should proceed, or that a contract should not be declared void, notwithstanding a violation of these Procurement Policies & Procedures, if (a) the parties acted in good faith, (b) proceeding with the procurement or ratification of the contract would not undermine the purposes of these Policies & Procedures, (c) the violation was insignificant or otherwise did not prevent substantial compliance with these Policies & Procedures, and (d) proceeding with the procurement or ratification would be in the best interest of the Board.

X. Authority of Chair During Unavailability of Executive Director

If the Executive Director is unavailable to perform the actions authorized in these Procurement Policies & Procedures, the Chair of the Board shall have authority to take any action that these Procurement Policies & Procedures authorize the Executive Director to take, including the designation of a procurement officer in any circumstance where the Executive Director is

authorized to designate a procurement officer. Any action taken by the Board Chair under this section shall be reported to the full Board at the next regular Board meeting.

XI. Internal Management Procedures

The Executive Director shall develop and implement internal management procedures to facilitate the implementation of these Procurement Policies & Procedures.

XII. Annual Report

Each year the Executive Director shall prepare a report for the Board that includes (a) a list of all contracts awarded by the Board valued at \$15,000 or more, the persons or entities to which the contract was awarded, the purpose of the contract, and the amount of the contract; and (b) a report on the Board's compliance with Title 14, Subtitle 3 of the State Finance and Procurement Article and other efforts to encourage minority business participation.