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MARYLAND DEPARTMENT OF GENERAL SERVICES

ADMINISTRATION • FACILITIES OPERATIONS & MAINTENANCE • FACILITIES PLANNING, DESIGN, CONSTRUCTION & ENERGY
PROCUREMENT & LOGISTICS • REAL ESTATE

Intergovernmental Cooperative Purchasing Agreement Determination Per COMAR 21.05.09.04

Background: On January 10, the United States Department of Health and Human Services stopped supplying the states with the Abbott BinaxNOW COVID-19 tests and Ag Card test directly, establishing in the alternative Federal Supply Schedule (“FSS”) Contract #36F79721D0073 ensuring tests are available for purchase by the respective states. The FSS contract is intended to eliminate the need for states, territories and other qualifying jurisdictions, including Maryland, to spend limited resources negotiating and establishing individual purchasing contracts with manufacturers and, most importantly, provides a consistent source of supplies to continue COVID-19 testing at congregate care facilities and for high-risk populations as part of each jurisdiction’s response to the COVID-19 pandemic. HHS has worked with Abbott to ensure BinaxNOW COVID-19 tests will be available for procurement by states, territories, and other government agencies through the schedule starting in mid-January 2021.

Analysis: Maryland’s use of the FSS Contract #36F79721D0073, as authorized by the Code of Maryland Regulations 21.05.09.03 C, promotes administrative efficiencies and government cooperation by eliminating the need for Maryland to compete with other states for the manufacturer’s time and test resources. Additionally, the federal contract aggregates purchasing power on behalf of the states, allowing Maryland to spend time it would have spent negotiating price and other contract terms on other efforts in response to the COVID-19 emergency. Using the FSS contract will further ensure the Maryland Department of Health’s immediate access to the supply of the economical Abbott BinaxNow tests. A competitive procurement would have added months to the supply process without any guarantee of acquiring a similarly economical, effective, and efficient product. Furthermore, participation in FSS Contract #36F79721D0073 does not evade the purposes set forth in COMAR 21.01.01.03 and, rather, supports those purposes because it provides increased economy in State procurement activities and maximizes to the fullest extent the purchasing power of the State by allowing the federal government to aggregate both the procurement and purchasing efforts on behalf of the states.

Conclusion: In light of the above analysis and in accordance with COMAR 21.05.09.04, it is determined that participation in Federal Supply Schedule Contract #36F79721D0073 will promote administrative efficiencies and intergovernmental cooperation and that such participation is in the best interest of the State and is not intended as a means to evade the purposes set forth under COMAR 21.01.01.03.

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