

§ 11. Procurement.

(a) Board of Estimates responsible.

The Board of Estimates shall be responsible for awarding contracts and supervising all purchasing by the City as provided in this section and elsewhere in the Charter.

(b) Authority of City Council.

(1) By ordinance passed by two-thirds of the City Council members, the Mayor and City Council shall set the dollar thresholds for:

(i) contracts that must be formally advertised; and

(ii) contracts that must be approved by the Board of Estimates.

(2) Pending enactment of an Ordinance under this subsection, the Board of Estimates shall set initial threshold amounts. Those initial amounts shall remain in effect until different amounts have been set by Ordinance under this subsection.

Editor's Note: Initial threshold amounts were set by Board of Estimates Resolution adopted December 22, 2010, as follows: § 11(c), which requires formal advertisements, applies to procurements involving expenditures of more than \$50,000. § 11(f), which requires contracts to be approved by the Board of Estimates, applies to contracts involving expenditures of more than \$25,000.

(c) Formal advertisement.

In contracting for any public work, or the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services other than professional services, for the City or by any municipal agency, involving an expenditure of greater than the threshold set under subsection (b) of this section, advertisements for proposals shall first be published at least twice in two or more newspapers of general circulation published in Baltimore City, and published electronically to the public, unless otherwise provided by the Charter. The first publication shall be made not less than 10 nor more than 90 days prior to the day set for opening the bids.

(d) Professional services.

All professional services contracted for by the City shall be engaged in the manner prescribed by resolution of the Board of Estimates.

(e) Emergencies, etc.

(i) When any supplies, materials, equipment, services, or public works are of such a nature that no advantage will result in seeking, or it is not practicable

to obtain, competitive bids, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature and the using agency certifies this in writing to the Board of Estimates, with written notice to the Department of Finance, the provisions of subsection (c) of this section may be dispensed with. However, the purchase may not be made, nor may the City incur any obligation for it, until approved by the Board of Estimates after considering the recommendation of the Department of Finance. When practicable, the City's intent to make a purchase under this exception shall be posted electronically to the public for comment prior to the approval of the purchase by the Board of Estimates.

(ii) In the event of an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates, the Department of Finance, upon application by the head of the municipal agency involved, may proceed to obtain the supplies, materials, equipment, services, or public works required without reference to the provisions of subsection (c) of this section. A full report of any this action shall be promptly submitted to the Board of Estimates.

(f) Contracts subject to Board of Estimates approval.

All purchases of services other than professional services, of property other than real estate or interests therein (except as may be otherwise provided by ordinance for foodstuffs and related perishables), and all other contracts involving an expenditure greater than an amount set under subsection (b) of this section, except those awarded by the Board of Estimates pursuant to the provisions of subsection (h) of this section, made by any municipal agency, in addition to compliance with other applicable provisions of the Charter, shall be submitted to the Board of Estimates for its approval and shall be binding upon the City only when so approved. The Board of Estimates may adopt rules and regulations governing the procedures and requirements to be followed by any municipal agency in making purchases or other contracts involving an expenditure that does not require formal advertising under subsection (c) of this section.

Editor's Note: For statutory requirements governing the proposal, adoption, and publication of administrative rules and regulations, see General Provisions Article, Title 4 {"Administrative Procedure Act – Regulations"}.

(g) Prequalification of bidders.

In contracting for any public work or the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency, the Board of Estimates may establish, maintain, and modify rules, regulations, and standards for

the prequalification of bidders. **Prequalification shall be encouraged and used wherever possible to ensure streamlined bidding processes and procedures.**

Editor's Note: For statutory requirements governing the proposal, adoption, and publication of administrative rules and regulations, see General Provisions Article, Title 4 {"Administrative Procedure Act – Regulations"}.

(h) *Bid awards.*

(1)

(i) All bids made to the City in response to the formal advertising procedures contained in this section, for materials, supplies, equipment, services, or public works, or for any other purpose, unless otherwise provided in the Charter, shall be opened by the Board of Estimates.

(ii) After opening the bids, the Board of Estimates shall award the contract, as an entirety to the lowest responsive and responsible bidder or by items to the respective lowest responsive and responsible bidders, or in the case of Requests for Proposals to the highest scoring responsive and responsible bidder, or shall reject all bids. However, whenever alternative bids are invited for two or more different things, then, after all bids have been opened, the Board may select the particular item that will be procured, and shall award the contract to the lowest responsive and responsible bidder or in the case of Requests for Proposals to the highest scoring responsive and responsible bidder for that particular item.

(iii) In the event of tie bids, the using agency, with written notice to the Department of Finance, shall make a written recommendation and report to the Board of Estimates setting forth all pertinent considerations and the reasons for its recommendation. The Board, after also considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie bid.

(iv) Once filed, bids are irrevocable.

(v) Any recommendation that is made by any municipal agency to the Board of Estimates as to the appropriate award to be made by the Board is advisory only and not binding on the Board.

(vi) Notwithstanding the competitive bid provisions of this Charter, the Board of Estimates may adopt rules and regulations that establish uniform procedures for providing, on a neighborhood service, neighborhood public

work, or neighborhood public improvement contract, limited bid preferences to responsive and responsible bidders who are residents of, or have their principal places of business in, that neighborhood.

Editor's Note: For statutory requirements governing the proposal, adoption, and publication of administrative rules and regulations, see General Provisions Article, Title 4 {"Administrative Procedure Act – Regulations"}.

(2)

(i) All bids for construction contracts let for the Department of Public Works, the Department of General Services, and the Department of Transportation and any other contracts for public works shall be accompanied by a check or bid bond. For all other contracts, the Director of Finance shall implement policies and procedures to determine whether a bid bond is required for a contract, the term and face value of the bond, and the manner in which the bond shall be provided and refunded.

(ii) Except as otherwise provided in this paragraph (2), the check shall be a certified check of the bidder, a bank cashier's check, or a bank treasurer's check, drawn on a clearing house bank. The check shall be in an amount provided by ordinance, by the bid specifications, or by an order or regulation of the using agency. In the case of bid checks of \$5,000 or less, the check may be of any type drawn on any banking institution of the United States.

(iii) The bid bond shall be in the form and amount provided by the rules and regulations of the Board of Estimates, and shall be filed by the bidder with the Department of Finance.

Editor's Note: For statutory requirements governing the proposal, adoption, and publication of administrative rules and regulations, see General Provisions Article, Title 4 {"Administrative Procedure Act – Regulations"}.

(3)

(i) The successful bidder promptly shall execute a formal contract, to be approved as to its form, terms, and conditions by the City Solicitor.

(ii) For all construction contracts let for the Department of Public Works, the Department of General Services, and the Department of Transportation and any other contracts for public works , the bidder shall execute and deliver to

the Mayor a good and sufficient performance bond, irrevocable letter of credit, or certification that the successful bidder meets the requirements under the City's self-insurance program for performance coverage. For all other contracts, the Director of Finance shall implement policies and procedures to determine whether a performance bond is required for a contract, the term and face value of the bond, and the manner in which the bond shall be provided.

(iii) The bond, letter of credit, or certification shall be:

1. in an amount equal to the full contract price; or
2. for each year in a multi-year contract (other than a construction contract), in an amount equal to the estimated contract price for that year, as determined by the Director of Finance.

(iv) Any successful bidder who fails to execute promptly and properly the required contract, performance bond, irrevocable letter of credit, or certification, as applicable, shall forfeit the amount deposited, or an equivalent amount under the bid bond. This amount shall be taken and considered as liquidated damages and not as penalty for the bidder's failure.

(4) When the successful bidder executes the contract and, if required, the performance bond, the bid checks shall be returned to all bidders or the equivalent amounts charged against their bid bond shall be released. If the City has deposited bid checks, the City shall reimburse these bidders in the amounts of the bid checks.

(5) If a bidder is not required to file a bid bond under the policies and procedures adopted by the Director of Finance and the bidder fails to execute and perform any contract awarded to that bidder, the exempted bidder shall forfeit the right to bid on any future City contract for a period of time determined by the Board of Estimates, and shall be liable for any costs incurred by the City as a result of the default.

(i) Local, small, and disadvantaged business enterprise programs.

The Mayor and City Council [may, by ordinance,] **shall not** establish programs that grant purchasing preferences to local, small, or disadvantaged businesses [and, for that purpose, waive or modify the application of this section (with the exception of subsection (a)) to certain transactions.]

(i) Grants

(1) Definitions

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

(2) "Entity" means any legally recognized organization, corporation, partnership, joint venture, association, individual, or other legal person authorized to conduct business under the laws of the United States, its territories, or any state therein.

(3) "Qualifying Entity" means an Entity that satisfies all of the following conditions

(i) Maintains audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP).

(ii) Regulatory Compliance

(1) Demonstrates compliance with all applicable federal, state, and local regulatory requirements, including those of the Securities and Exchange Commission, if subject to its jurisdiction.

(2) Provides documentation of compliance and good standing with regulatory authorities on a regular basis.

(iii) Demonstrates sufficient operational capacity, including staffing, equipment, and resources, to execute any Municipal Procurement or Grant agreement with accountability and efficiency.

(iv) Fiduciary Eligibility

(1) Qualifies for inclusion in Baltimore's Retirement Savings Plan, Employees' Retirement System, Elected Officials' Retirement System, or Fire and Police Employees' Retirement System, or any other city retirement system, savings, pension, or annuity, or

(2) Provides verifiable proof of sufficient operational liquidity, including

(i) Maintaining a minimum cash reserve as determined by the Board of Estimates,

(ii) Demonstrating a consistent positive or neutral cash flow over the last five fiscal years, verified by audited financial statements, and

(iii) Maintaining comprehensive liability insurance with coverage limits of no less than an amount as determined by the Board of Estimates, and

(2) Maintains financial stability, with no record of insolvency or bankruptcy within the preceding three years.

(4) "Grant" means any allocation, appropriation, disbursement, or transfer of City funds, property, or resources to an Entity or individual for purposes not tied to a competitively procured Municipal Procurement Agreement,

(i) Grants include, but are not limited to,

(1) Financial support for operational or capital expenses, programmatic activities, public benefit projects, capacity-building initiatives, or technical assistance, or

(2) any other financial disbursement not executed pursuant to a competitive solicitation process for specific goods or services acquired by the city.

(ii) Prohibition on Pass-Through Disbursements

(1) A Qualifying Entity shall not act as a fiscal intermediary or pass-through for the purpose of directing funds, in whole or in part, to an Entity or individual that does not meet the definition of a Qualifying Entity.

(2) Any Grant agreement that circumvents this prohibition shall be deemed null and void ab initio.

(5) "Municipal Procurement" refers exclusively to contracts, agreements, purchase orders, or other instruments obliging City funds for goods, services, construction, or other deliverables acquired through a competitive solicitation process.

(6) "Public Financial Resource" refers to any City-administered fund, account, trust, or revenue stream designated for allocation, appropriation, or disbursement by the City.

(j) Administration of Grants

(1) Certification of Eligibility

(i) No grant shall be awarded, allocated, or disbursed to any Entity or individual unless the recipient is certified as Qualifying Entity under subsection (i) (3).

(ii) The Department of Finance shall certify the eligibility of all recipients prior to submission of any Grant proposal to the Board of Estimates

(2) The Board of Estimates shall not approve any Grant agreement in which funds are to be disbursed through a Qualifying Entity to a non-qualifying recipient.

(3) Grants are permitted to be awarded, allocated, or disbursed to non-Qualifying Entities when

(i) the City acts as a pass-through entity for State and Federal money or resources, and

(ii) no allocation, appropriation, disbursement, or transfer of City funds, property, or resources to partly or fully complete or compensate the Grant recipient is provided.

(4) Terms and Deliverables

(i) Each Grant shall include

(1) Clearly defined performance benchmarks and measurable deliverables,

(2) reporting requirements sufficient to allow for ongoing monitoring and evaluation,

(3) Terms for the immediate suspension or termination of funds in the event of noncompliance or misrepresentation

(iii) No Grant shall extend beyond a term of one fiscal year unless recertification of the recipient's eligibility is completed, or the City is acting as a pass-through entity for State and Federal money or resources.

(5) Audit and Oversight

(i) The Department of Audits shall conduct annual reviews of all Grants to ensure compliance with this section.

(ii) Findings of noncompliance shall result in immediate suspension of funds, recovery of disbursed amounts, and disqualification of the recipient from future Grants for a period of no less than twenty years. The Department of Audits and Board of Estimates shall establish a grievance process for entities to contest findings of noncompliance.

(6) Requirements for the Board of Estimates

(i) Approval of Disbursements

(1) All proposed grants shall be submitted to the Board of Estimates for review and approval prior to disbursement.

(2) The Board of Estimates shall ensure that each proposed Grant complies fully with the requirements of this section, including certification of the recipient Entity under subsection (i) (3).

(ii) Restrictions on Delegation

(1) The Board of Estimates may not delegate its authority to approve Grants to any other department, office, or individual.

(2) Any attempt to circumvent the Board of Estimate's approval process shall render the Grant agreement null and void ab initio.

(k) Repeal of Funds and Dissolution of Commissions

(1) Elimination of Funds

(i) Any funds, accounts, or trusts established by Charter or City law that directly or indirectly disburses Grants to any Entities or individuals not meeting the definition of a Qualifying Entity under subsection (i) (3) shall be deemed void and abolished.

(ii) Funds designated solely for pass-through disbursement of state or federal monies shall be exempt, provided they comply with the limitations set forth in subsection (j) (3).

(2) Dissolution of Commissions

(i) Any board, commission, committee, or other body created by the Charter or City law for the purpose of overseeing, administering, or approving the disbursement of Grants to Entities or individuals that

do not meet the definition of a Qualifying Entity shall be dissolved immediately.

(ii) Exceptions shall be granted only to boards, commissions, committees, or other bodies explicitly required by state or federal law to exist.

(3) The Department of Finance and Board of Estimates shall determine any procedure for reallocation of funds from abolished accounts.

(4) No fund, account, trust, board, commission, committee, or similar entity disbursing funds to non-Qualifying Entities shall be created or reestablished unless explicitly required by State or Federal law.

(Res. 07-031, ratified Nov. 6, 2007; Res. 10-024, ratified Nov. 2, 2010; Res. 16-030, ratified Nov. 8, 2016.)