

CITY OF BALTIMORE
RESOLUTION _____
Council Bill 10-0499

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: May 3, 2010
Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: August 9, 2010

A RESOLUTION OF THE MAYOR AND CITY COUNCIL CONCERNING

Charter Amendment – Procurement

FOR the purpose of establishing new procedures for establishing and modifying certain bid threshold amounts, bid and performance requirements, advertising requirements, award criteria, and other matters governing procurement; and submitting this amendment to the qualified voters of the City for adoption or rejection.

BY proposing to amend
Article VI - Board of Estimates
Section(s) 11
Baltimore City Charter
(1996 Edition)

BY proposing to amend
Article VII - Executive Departments
Section(s) 17(d)
Baltimore City Charter
(1996 Edition)

SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the City Charter is proposed to be amended to read as follows:

Baltimore City Charter

Article VI. Board of Estimates

§ 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.

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter stricken by amendment.

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1 (B) *AUTHORITY OF CITY COUNCIL.*

2 (1) BY ORDINANCE PASSED BY TWO-THIRDS OF THE CITY COUNCIL MEMBERS, THE MAYOR
3 AND CITY COUNCIL SHALL SET THE DOLLAR THRESHOLDS FOR:

4 (I) CONTRACTS THAT MUST BE FORMALLY ADVERTISED; AND

5 (II) CONTRACTS THAT MUST BE APPROVED BY THE BOARD OF ESTIMATES.

6 (2) PENDING ENACTMENT OF AN ORDINANCE UNDER THIS SUBSECTION, THE BOARD OF
7 ESTIMATES SHALL SET INITIAL THRESHOLD AMOUNTS. THOSE INITIAL AMOUNTS
8 SHALL REMAIN IN EFFECT UNTIL DIFFERENT AMOUNTS HAVE BEEN SET BY ORDINANCE
9 UNDER THIS SUBSECTION.

10 (C) [(b) *Contracts of \$25,000 or more*] *FORMAL ADVERTISEMENT.*

11 [(i)] In contracting for any public work, or the purchase of any supplies (unless otherwise
12 provided by ordinance for foodstuffs and related perishables), materials, equipment, or
13 services other than professional services, FOR THE CITY OR BY ANY MUNICIPAL AGENCY,
14 involving an expenditure [of twenty-five thousand dollars or more, for the City or by any
15 municipal agency] GREATER THAN THE THRESHOLD SET UNDER SUBSECTION (B) OF THIS
16 SECTION, advertisements for proposals shall first be published at least twice in [two] ONE
17 or more [daily] newspapers OF GENERAL CIRCULATION published in Baltimore City, AND
18 PUBLISHED ELECTRONICALLY TO THE PUBLIC, unless otherwise provided by the Charter.
19 The first publication shall be made not less than ten nor more than ninety days prior to
20 the day set for opening the bids.

21 [(ii) The City Council, by ordinance adopted by a majority of the members, may increase
22 or decrease the dollar amounts provided in this subsection (b) for contracts requiring
23 published advertisements.]

24 [(iii) The contract for any public work or the purchase of any supplies (unless otherwise
25 provided by ordinance for foodstuffs and related perishables), materials, equipment,
26 or services other than professional services, involving an expenditure of five thousand
27 dollars or more shall be made by the Board of Estimates in the manner provided in
28 subsection (g).]

29 (D) [(c)] *Professional services.*

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

32 (E) [(d)] *Emergencies, etc.*

33 (i) When any supplies, materials, equipment, services, or public works are of such a
34 nature that no advantage will result in seeking, or it is not practicable to obtain,
35 competitive bids, or when the need for [such] supplies, materials, equipment,
36 services, or public works is of an emergency nature[,] and the using agency certifies
37 this in writing to the Board of Estimates, with written notice to the Department of
38 Finance, the provisions of subsection [(b)] (C) OF THIS SECTION may be dispensed
39 with[, but]. HOWEVER, [such] THE purchase [shall] MAY not be made, nor [shall]

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1 MAY the City incur any obligation [therefor] FOR IT, until approved by the Board of
2 Estimates after considering the recommendation of the Department of Finance.
3 WHEN PRACTICABLE, THE CITY'S INTENT TO MAKE A PURCHASE UNDER THIS
4 EXCEPTION SHALL BE POSTED ELECTRONICALLY TO THE PUBLIC FOR COMMENT PRIOR
5 TO THE APPROVAL OF THE PURCHASE BY THE BOARD OF ESTIMATES.

6 (ii) In the event of an emergency of such a nature that the public welfare would be
7 adversely affected by awaiting the approval of the Board of Estimates, the
8 Department of Finance, upon application by the head of the municipal agency
9 involved, may proceed to obtain the supplies, materials, equipment, services, or
10 public works required without reference to the provisions of subsection [(b)] (C) OF
11 THIS SECTION[;]. A [a] full report of [any such] THIS action shall be promptly
12 submitted to the Board of Estimates.

13 (F) [(e)] *Contracts [of \$5,000 - \$25,000] SUBJECT TO BOARD OF ESTIMATES APPROVAL.*

14 All purchases of services other than professional services, of property other than real
15 estate or interests therein (except as may be otherwise provided by ordinance for
16 foodstuffs and related perishables), and all other contracts involving an expenditure [of
17 more than \$5,000 and less than \$25,000] GREATER THAN AN AMOUNT SET UNDER
18 SUBSECTION (B) OF THIS SECTION, except those awarded by the Board of Estimates
19 pursuant to the provisions of subsection [(g)] (H) OF THIS SECTION, made by any
20 municipal agency, in addition to compliance with other applicable provisions of the
21 Charter, shall be submitted to the Board of Estimates for its approval and shall be binding
22 upon the City only when so approved. The Board of Estimates may adopt rules and
23 regulations governing the procedures and requirements to be followed by any municipal
24 agency in making purchases or other contracts involving an expenditure [of less than
25 \$25,000] THAT DOES NOT REQUIRE FORMAL ADVERTISING UNDER SUBSECTION (C) OF THIS
26 SECTION.

27 (G) [(f)] *Prequalification of bidders.*

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

32 (H) [(g)] *Bid awards.*

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

37 (ii) After opening the bids, the Board of Estimates shall award the contract, as an
38 entirety to the lowest responsive and responsible bidder, or by items to the
39 respective lowest responsive and responsible bidders, OR IN THE CASE OF
40 REQUESTS FOR PROPOSALS TO THE HIGHEST SCORING RESPONSIVE AND
41 RESPONSIBLE BIDDER, or shall reject all bids. However, whenever alternative bids
42 are invited for two or more different things, then, after all bids have been opened,
43 the Board may select the particular [thing] ITEM that will be procured, and shall

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1 award the contract to the lowest responsive and responsible bidder OR IN THE
2 CASE OF REQUESTS FOR PROPOSALS TO THE HIGHEST SCORING RESPONSIVE AND
3 RESPONSIBLE BIDDER for that particular [thing] ITEM.

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

10 (iv) Once filed, bids are irrevocable.

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

14 (vi) Notwithstanding the competitive bid provisions of this Charter, the Board of
15 Estimates may adopt rules and regulations that establish uniform procedures for
16 providing, on a neighborhood service, neighborhood public work, or
17 neighborhood public improvement contract, limited bid preferences to responsive
18 and responsible bidders who are residents of, or have their principal places of
19 business in, that neighborhood.

20 (2) (i) All bids FOR CONSTRUCTION CONTRACTS LET FOR THE DEPARTMENT OF PUBLIC
21 WORKS, THE DEPARTMENT OF GENERAL SERVICES, AND THE DEPARTMENT OF
22 TRANSPORTATION AND ANY OTHER CONTRACTS FOR PUBLIC WORKS shall be
23 accompanied by a check or [a] bid bond. FOR ALL OTHER CONTRACTS, THE
24 DIRECTOR OF FINANCE SHALL IMPLEMENT POLICIES AND PROCEDURES TO
25 DETERMINE WHETHER A BID BOND IS REQUIRED FOR A CONTRACT, THE TERM AND
26 FACE VALUE OF THE BOND, AND THE MANNER IN WHICH THE BOND SHALL BE
27 PROVIDED AND REFUNDED.

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

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

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

39 (II) FOR ALL CONSTRUCTION CONTRACTS LET FOR THE DEPARTMENT OF PUBLIC
40 WORKS, THE DEPARTMENT OF GENERAL SERVICES, AND THE DEPARTMENT OF
41 TRANSPORTATION AND ANY OTHER CONTRACTS FOR PUBLIC WORKS , the bidder
42 shall [also] execute and deliver to the Mayor a good and sufficient performance

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1 bond, irrevocable letter of credit, or certification that the successful bidder meets
2 the requirements under the City's self-insurance program for performance
3 coverage. FOR ALL OTHER CONTRACTS, THE DIRECTOR OF FINANCE SHALL
4 IMPLEMENT POLICIES AND PROCEDURES TO DETERMINE WHETHER A PERFORMANCE
5 BOND IS REQUIRED FOR A CONTRACT, THE TERM AND FACE VALUE OF THE BOND,
6 AND THE MANNER IN WHICH THE BOND SHALL BE PROVIDED.

7 (III) [(ii)] The bond, letter of credit, or certification shall be:

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

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

17 (4) [On execution of] WHEN THE SUCCESSFUL BIDDER EXECUTES the contract and, IF
18 REQUIRED, THE PERFORMANCE bond [by the successful bidder], the bid checks shall
19 be returned to all bidders[,] or the equivalent amounts charged against their bid bond
20 shall be released. If the City has deposited bid checks [of \$5,000 or less], the City
21 shall reimburse these bidders in the amounts of the bid checks.

22 (5) [(i)] The Director of Finance, with the approval of the Board of Estimates, may
23 exempt from the bid bond and performance bond requirements of paragraphs (2) and
24 (3) of this subsection the procurement of any standard items of commerce and
25 services that are from standard trades and professions and not altered or customized
26 to unique City specifications.]

27 [(ii)] If a bidder [exempted under this Paragraph] IS NOT REQUIRED TO FILE A BID
28 BOND UNDER THE POLICIES AND PROCEDURES ADOPTED BY THE DIRECTOR OF FINANCE
29 AND THE BIDDER fails to execute and perform any contract awarded to that bidder, the
30 exempted bidder shall forfeit the right to bid on any future City contract for a period
31 of time determined by the Board of Estimates, and shall be liable for any costs
32 incurred by the City as a result of the default.

33 [(h)] *Performance bonds.*

34 (i) Notwithstanding any other provision of this section, a bidder on a contract for any
35 public work or the purchase of any supplies, materials, equipment, or services for the
36 City or by any municipal agency, is not required to post a bid bond if the bid is equal
37 to or less than the amount authorized by ordinance.

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1 (ii) Notwithstanding any other provision of this section, a contractor on a contract for any
2 public work or the purchase of any supplies, materials, equipment, or services for the
3 City or by any municipal agency, is not required to post a performance bond if such
4 contract is for an amount equal to or less than the amount authorized by ordinance.

5 (iii) At such time as the value of the contract, through amendment or adjustment,
6 including changes in scope or in estimated quantities, exceeds the authorized amount,
7 the contractor shall be required to post a performance bond in the amount of 100% of
8 the value of the contract in excess of the authorized amount.

9 (iv) Upon a finding that one or more of the following conditions exist, the Board of
10 Estimates may require bidders to post bid bonds with their bids and performance
11 bonds with the execution of contracts otherwise exempt from such requirements:

- 12 1. the contract is for the purchase of goods to be specially manufactured or
13 assembled or which are otherwise not normally available in suppliers'
14 inventories;
- 15 2. the contract involves services which, if improperly or inadequately performed,
16 pose a substantial risk of injury to persons or damage to property, with
17 potential liability or loss in excess of \$100,000;
- 18 3. the contractor and/or bidder has no prior record of performance by which the
19 Board of Estimates may use to determine the contractor's or bidder's ability to
20 perform.

21 (v) Where any condition listed above is found to exist prior to advertising, the
22 advertisements and specifications shall state the bond requirements.

23 (vi) No payment or partial payment shall be made to a contractor proceeding without a
24 bond under this section unless and until evidence satisfactory to the Director of
25 Finance is presented showing that the contractor has completed the contract or
26 portion thereof for which payment or partial payment is sought, in accordance with
27 the terms of the contract and satisfactory to the Contract Compliance Officer and
28 either the Purchasing Agent or City Engineer, and that the contractor is entitled to the
29 payment or partial payment.]

30 **Article VII. Executive Departments**

31 *Department of Finance*

32 **§ 17. Department of Finance: purchasing.**

33 (d) *Responsibility for [storing, distributing, etc] SURPLUS MATERIAL.*

34 [Except as otherwise provided by the Charter as to the Department of Education, and
35 unless] UNLESS special exception is made by resolution of the Board of Estimates, the
36 Department shall be responsible for [storing, distributing,] disposing of and reclaiming
37 materials, supplies, and equipment purchased for municipal agencies.

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1 **SECTION 2. AND BE IT FURTHER RESOLVED,** That this proposed amendment to the City
2 Charter be submitted to the legal and qualified voters of Baltimore City, for adoption or
3 rejection, in accordance with Article XI-A, § 5 of the Maryland Constitution, in the form
4 specified by the City Solicitor.

Certified as duly passed this ____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this ____ day of _____, 20__

Chief Clerk

Approved this ____ day of _____, 20__

Mayor, Baltimore City