

**CITY OF BALTIMORE
COUNCIL BILL 07-0712
(Resolution)**

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: June 11, 2007
Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance, Board of Estimates

A RESOLUTION ENTITLED

1 A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning

2 **Charter Amendment – Procurement**

3 FOR the purpose of updating the rules governing the procurement of public works, supplies,
4 materials, equipment, or services; authorizing the adjustment from time to time, by
5 Ordinance, of certain threshold dollar amounts; modifying the advertising requirements;
6 authorizing certain performance bonds, letters of credit, or certifications to be on an annual
7 contract-price basis; correcting, clarifying, and conforming certain language; and submitting
8 this amendment to the qualified voters of the City for adoption or rejection.

9 By proposing an amendment to
10 Article VI - Board of Estimates
11 Section(s) 11
12 Baltimore City Charter
13 (1996 Edition)

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

16 **Baltimore City Charter**

17 **Article VI. Board of Estimates**

18 **§ 11. Procurement.**

19 (a) (1) The Board of Estimates [shall be] is responsible for awarding contracts and
20 supervising all purchasing by the City, as provided in this section and elsewhere in the Charter.

21 (2) **BY ORDINANCE, THE MAYOR AND CITY COUNCIL MAY ADJUST ONE OR MORE OF THE**
22 **DOLLAR AMOUNTS SPECIFIED IN THIS SECTION FOR DETERMINING WHICH CONTRACTS OR**
23 **PURCHASES REQUIRE CERTAIN APPROVALS, PUBLISHED ADVERTISEMENTS, OR OTHER**
24 **PROCEDURES.**

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

Council Bill 07-0712

1 (b) (1) [(i)] In contracting for any public work[,], or FOR the purchase of any supplies (unless
2 otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or
3 services (other than professional services)[,], involving an expenditure of [twenty-five thousand
4 dollars] \$25,000 or more, for the City or by any municipal agency, [advertisements] REQUESTS
5 for proposals shall [first] be [published] ADVERTISED, UNLESS OTHERWISE PROVIDED IN THIS
6 CHARTER, at least [twice] ONCE in two or more daily newspapers [published] OF GENERAL
7 CIRCULATION in Baltimore City[,], unless otherwise provided by the Charter].

8 (2) The first [publication] ADVERTISEMENT shall be made not less than [ten] 10 nor more
9 than [ninety] 90 days [prior to] the day set for opening [the] bids.

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

13 (3) [(iii)] The contract for any public work or FOR the purchase of any supplies (unless
14 otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or
15 services (other than professional services)[,], involving an expenditure of [five thousand dollars]
16 \$5,000 or more shall be made by the Board of Estimates in the manner provided in subsection
17 (g).

18 (c) All professional services contracted for by the City shall be engaged in the manner
19 prescribed by resolution of the Board of Estimates.

20 (d) (1) [(i)] When any supplies, materials, equipment, services, or public works are of [such]
21 a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive
22 bids, or when the need for [such] THOSE supplies, materials, equipment, services, or public works
23 is of an emergency nature, and the using agency certifies this in writing to the Board of
24 Estimates, with written notice to the Department of Finance, the provisions of subsection (b)
25 may be dispensed with, but [such] THE purchase [shall] MAY not be made, nor [shall] MAY the
26 City incur any obligation [therefor] FOR THE PURCHASE, until approved by the Board of
27 Estimates after considering the recommendation of the Department of Finance.

28 (2) [(ii)] In [the event of] an emergency of [such] a nature that the public welfare would
29 be adversely affected by awaiting [the] approval of the Board of Estimates, the Department of
30 Finance, [upon] ON application by the head of the municipal agency involved, may proceed to
31 obtain the supplies, materials, equipment, services, or public works required without reference to
32 the provisions of subsection (b)[;]. [a] A full report of [any such] THAT action shall be promptly
33 submitted to the Board of Estimates.

34 (e) (1) All purchases of services (other than professional services), of property other than real
35 estate or interests [therein] IN REAL ESTATE [(except as may be otherwise provided by ordinance
36 for foodstuffs and related perishables),] and all other contracts (EXCEPT AS MAY BE OTHERWISE
37 PROVIDED BY ORDINANCE FOR FOODSTUFFS AND RELATED PERISHABLES) involving an
38 expenditure of more than \$5,000 and less than \$25,000, except those awarded by the Board of
39 Estimates [pursuant to the provisions of] UNDER subsection (g), made by any municipal agency,
40 in addition to compliance with other applicable provisions of the Charter, shall be submitted to
41 the Board of Estimates for its approval and shall be binding [upon] ON the City only when so
42 approved.

Council Bill 07-0712

1 (2) The Board of Estimates may adopt rules and regulations governing the procedures
2 and requirements to be followed by any municipal agency in making purchases or other contracts
3 involving an expenditure of less than \$25,000.

4 (f) In contracting for any public work or FOR the purchase of any supplies, materials,
5 equipment, or services for the City or by any municipal agency, the Board of Estimates may
6 establish, maintain, and modify rules, regulations, and standards for the prequalification of
7 bidders.

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

12 (ii) [The] AFTER OPENING THE BIDS, Board of Estimates[, after opening the bids,]
13 shall award the contract, as an entirety to the lowest RESPONSIVE AND responsible bidder[,] or by
14 items to the respective lowest RESPONSIVE AND responsible bidders, or shall reject all bids[;].
15 [provided, however, that] HOWEVER, whenever alternative bids are invited for two or more
16 different things, then, after all bids have been opened, the Board may select the particular thing
17 [which shall] THAT WILL be procured, and shall award the contract to the lowest RESPONSIVE
18 AND responsible bidder for that particular thing.

19 (iii) In the event of tie bids, the using agency, with written notice to the Department
20 of Finance, shall make a written recommendation and report to the Board of Estimates setting
21 forth all pertinent considerations and the reasons for its recommendation. The Board, after also
22 considering the recommendation of the Department of Finance, may then award the contract in
23 its discretion, [provided that] AS LONG AS the total cost to the City [shall] DOES not exceed the
24 amount of the tie bid.

25 (iv) [Bids when] ONCE filed, [shall be] BIDS ARE irrevocable.

26 (v) Any recommendation [which may be] THAT IS made by any municipal agency to
27 the Board of Estimates as to the appropriate award to be made by the Board [shall be] IS advisory
28 only and not binding [upon] ON the Board.

29 (vi) Notwithstanding the competitive bid provisions of [the] THIS Charter, [after
30 making appropriate findings,] the Board of Estimates[, by uniform rule or regulation,] may
31 [provide] ADOPT RULES AND REGULATIONS THAT ESTABLISH UNIFORM PROCEDURES FOR
32 PROVIDING, [a limited bid preference to a responsible bidder] on a neighborhood service,
33 neighborhood public work, or neighborhood public improvement contract, LIMITED BID
34 PREFERENCES TO RESPONSIVE AND RESPONSIBLE BIDDERS [if that responsible bidder is a resident]
35 WHO ARE RESIDENTS of, or [has its] HAVE THEIR principal [place] PLACES of business in, that
36 neighborhood.

37 (2) (i) [(ii)] All bids shall be accompanied by a check or a bid bond.

38 (ii) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (2), THE check shall
39 be a certified check of the bidder, a bank cashier's check, or a bank treasurer's check, drawn
40 [upon] ON a clearing house bank. The check shall be in an amount provided by ordinance, by the
41 bid specifications, or by an order or regulation of the using agency. In the case of bid checks of

Council Bill 07-0712

1 \$5,000 or less, the check may be of any type drawn [upon] ON any banking institution of the
2 United States.

3 (III) The bid bond shall be in the form and amount provided by THE rules and
4 regulations [adopted by] OF the Board of Estimates, and shall be filed by the bidder with the
5 Department of Finance.

6 (3) (I) [(iii)] The successful bidder promptly shall execute a formal contract, to be
7 approved as to its form, terms, and conditions by the City Solicitor, and [such] THE bidder shall
8 also execute and deliver to the Mayor[, in the amount of the contract price,] a good and sufficient
9 performance bond, irrevocable letter of credit, or certification that the successful bidder meets
10 the requirements under the City's self-insurance program for performance coverage.

11 (II) THE BOND, LETTER OF CREDIT, OR CERTIFICATION SHALL BE:

- 12 1. IN AN AMOUNT EQUAL TO THE FULL CONTRACT PRICE; OR
- 13 2. FOR EACH YEAR IN A MULTI-YEAR CONTRACT (OTHER THAN A
14 CONSTRUCTION CONTRACT), IN AN AMOUNT EQUAL TO THE ESTIMATED
15 CONTRACT PRICE FOR THAT YEAR, AS DETERMINED BY THE DIRECTOR OF
16 FINANCE.

17 (III) Any successful bidder who fails to execute promptly and properly the required
18 contract, performance bond, irrevocable letter of credit, or certification, as [is] applicable, shall
19 forfeit the amount deposited, or an equivalent amount under the bid bond. This amount shall be
20 taken and considered as liquidated damages and not as penalty for the BIDDER'S failure [of the
21 bidder to execute the contract, and performance bond, irrevocable letter of credit, or certification,
22 as is applicable].

23 (4) [Upon the] ON execution of the contract and bond by the successful bidder, the bid
24 checks shall be returned to all bidders, or the equivalent amounts charged against their bid bond
25 shall be released. If the City has deposited bid checks of \$5,000 or less, the City shall reimburse
26 these bidders in the amounts of the bid checks.

27 [If an exempted bidder fails to execute and perform any contract awarded to that bidder, the
28 exempted bidder shall forfeit the right to bid on any future City contract for a period of time
29 determined by the Board of Estimates, and shall be liable for any costs incurred by the City as a
30 result of the default.]

31 (5) (I) [(iv)] The Director of Finance, with the approval of the Board of Estimates, may
32 [declare] EXEMPT FROM THE BID BOND AND PERFORMANCE BOND REQUIREMENTS OF PARAGRAPHS
33 (2) AND (3) OF THIS SUBSECTION the procurement of any standard items of commerce and
34 services THAT ARE from standard trades and professions[, which are] AND not altered or
35 customized to unique City specifications[, to be exempt from the bid bond and/or performance
36 bond requirements of subsections (ii) and (iii)]. [This subsection is controlling with respect to
37 bid and performance bonds for those items and services which are exempted under its
38 provisions.]

39 (II) If an [exempted] bidder EXEMPTED UNDER THIS PARAGRAPH fails to execute and
40 perform any contract awarded to that bidder, the exempted bidder shall forfeit the right to bid on

Council Bill 07-0712

1 any future City contract for a period of time determined by the Board of Estimates, and shall be
2 liable for any costs incurred by the City as a result of the default.

3 (h) (1) [(i)] Notwithstanding any other provision of this section, a bidder on a contract for
4 any public work or FOR the purchase of any supplies, materials, equipment, or services for the
5 City or by any municipal agency[,], is not required to post a bid bond if the bid is equal to or less
6 than the amount authorized by ordinance.

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

11 (3) [(iii)] At [such] ANY time [as] THAT the value of the contract, through amendment or
12 adjustment, including changes in scope or in estimated quantities, exceeds the authorized
13 amount, the contractor shall be required to post a performance bond in the amount of 100% of
14 the value of the contract in excess of the authorized amount.

15 (4) (I) [(iv) Upon] ON a finding that one or more of the following conditions exist, the
16 Board of Estimates may require bidders to post bid bonds with their bids and performance bonds
17 with the execution of contracts otherwise exempt from [such] THESE requirements:

18 1. the contract is for the purchase of goods to be specially manufactured or
19 assembled or [which are] otherwise not normally available in suppliers' inventories;

20 2. the contract involves services [which] THAT, if improperly or inadequately
21 performed, pose a substantial risk of injury to persons or damage to property, with potential
22 liability or loss in excess of \$100,000;

23 3. the BIDDER OR contractor [and/or bidder] has no prior record of
24 performance by which the Board of Estimates may use to determine the contractor's or bidder's
25 ability to perform.

26 (II) [(v)] [Where any condition listed above] IF ONE OF THESE CONDITIONS is [found
27 to exist prior to] DISCOVERED BEFORE advertising, the advertisements and specifications shall
28 state the bond requirements.

29 (5) [(vi)] No payment or partial payment [shall] MAY be made to a contractor proceeding
30 without a bond under this section unless and until evidence satisfactory to the Director of
31 Finance is presented [showing] that:

32 1. the contractor has completed the contract or portion [thereof] OF THE
33 CONTRACT for which payment or partial payment is sought, in accordance with the terms of the
34 contract and satisfactory to the [Contract Compliance Officer] USING AGENCY and [either] the
35 [Purchasing Agent or City Engineer] DIRECTOR OF FINANCE, and

36 2. [that] the contractor is entitled to the payment or partial payment.

Council Bill 07-0712

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.