



## **BALTIMORE CITY COUNCIL TAXATION, FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE**

### *Mission Statement*

*On behalf of the Citizens of Baltimore City, the mission of the Taxation, Finance and Economic Development Committee of the Baltimore City Council is to legislate policy that will deter unnecessary tax burdens while seeking and supporting projects and initiatives that will generate and increase our tax base. Reviewing and considering financing tools that impact the retention and sustainability of our economic base is essential. Introducing and enhancing legislation that perpetuates equal access to economic development for African Americans/Minorities/Women and other members of our community that will result in an improved quality of life for all citizens of Baltimore is a critical component of Baltimore's success.*

**The Honorable Sharon Green Middleton  
Chairwoman**

### PUBLIC HEARING

**Thursday, October 15, 2020**

**10:00 AM**

**Webex Virtual Hearing**

**Bill 20-0605**

**Minority and Women's Business Utilization - Emergencies**

## CITY COUNCIL COMMITTEES

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**BILL SYNOPSIS**

**Committee: Taxation, Finance and Economic Development**

**Bill 20-0605**

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**Minority and Women’s Business Utilization - Emergencies**

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**Sponsor:** *Councilmember Kris Burnett*

**Introduced:** *September 21, 2020*

**Purpose:**

For the purpose of clarifying and expanding the conditions for a City agency to obtain a waiver from the City’s minority business and women’s business contract utilization requirements; requiring that, if an agency receives a waiver for an emergency, the agency submit a report to the Board of Estimates and the Minority and Women’s Business Opportunity Office; defining certain terms; and generally relating to greater transparency and utilization of minority and women’s business in City emergency contracting.

**Effective:** 30 Days after enactment

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**Agency Reports**

| Law Department  | Comments |
|---|----------|
| Baltimore Development Corporation                       |          |
| Mayor’s Office of Minority and Women’s Owned Businesses |          |
| Minority and Women’s Business Opportunity Office        |          |
| Office of Employment Development                        |          |
| Finance   |          |

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Article 5 – Finance, Property, and Procurement, Section(s) 28 – 64.1, Baltimore City Code (Edition 2000)

## **Analysis**

### **Background**

If enacted, Bill 20-0605 would allow for a city agency to request, and the Minority and Women’s Business Opportunity Office to grant a Waiver for Emergency Procurement of resources or services to provide immediate relief during a catastrophic event that directly impacts the life, public health, or public safety of Baltimore City residents, stakeholders, or critical infrastructure. This legislation would require that the contracting agency make a good faith effort to utilize MBE/WBE companies, or encourage prime contractors to utilize MBE/WBE companies as subcontractors. During this process the agency initiating the waiver request shall contact the Minority and Women’s Business Opportunity Office to request assistance in expediting emergency MBE/WBE utilization, and receiving at least one MBE and WBE quote from companies that can provide the goods and services needed.

If a contract is executed under the guidelines of this legislation, where a waiver was granted, the contracting agency will be required to submit a report to the Minority and Women’s Business Opportunity Office and the Board of Estimates in less than 15 days to provide information as outlined in this legislation. That report will be required to be posted on the Minority and Women’s Business Opportunity Office’s website upon receipt.

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### **Additional Information**

**Fiscal Note:** Not Available

**Information Source(s):**

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Analysis by: Samuel Johnson, Jr.  
Analysis Date: October 14, 2020

Direct Inquiries to: (410) 396-1091

**CITY OF BALTIMORE  
COUNCIL BILL 20-0605  
(First Reader)**

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Introduced by: Councilmember Burnett, President Scott, Councilmembers Bullock, Cohen,  
Clarke, Middleton, Sneed, Henry, Dorsey, Pinkett

Introduced and read first time: September 21, 2020

Assigned to: Taxation, Finance and Economic Development Committee

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Baltimore Development Corporation,  
Mayor's Office of Minority and Women-Owned Business Development, Minority and Women's  
Business Opportunity Office, Office of Emergency Management, Department of Finance

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Minority and Women's Business Utilization – Emergencies**

3 FOR the purpose of clarifying and expanding the conditions for a City agency to obtain a waiver  
4 from the City's minority business and women's business contract utilization requirements;  
5 requiring that, if an agency receives a waiver for an emergency, the agency submit a report to  
6 the Board of Estimates and the Minority and Women's Business Opportunity Office; defining  
7 certain terms; and generally relating to greater transparency and utilization of minority and  
8 women's business in City emergency contracting.

9 BY repealing and re-ordaining, with amendments

10 Article 5 - Finance, Property, and Procurement

11 Section(s) 28-64

12 Baltimore City Code

13 (Edition 2000)

14 BY adding

15 Article 5 - Finance, Property, and Procurement

16 Section(s) 28-64.1

17 Baltimore City Code

18 (Edition 2000)

19 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the  
20 Laws of Baltimore City read as follows:

21 **Baltimore City Code**

22 **Article 5. Finance, Property, and Procurement**

23 **Subtitle 28. Minority and Women's Business Enterprises;**  
24 **Small Local Business Enterprises**

25 ***Part VI. Waivers***

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

**Council Bill 20-0605**

1 **§ 28-64. Waiver by agency – SOLE SOURCE.**

2 [(a) *In general.*]

3 [A contracting agency may waive the utilization requirements for a specific contract as  
4 provided in this section.]

5 [(b) *Sole source.*]

6 [The] A CONTRACTING agency may waive the utilization requirements if, with the advice  
7 of the Office, it finds that:

8 (1) needed goods or services are available only from a sole source; and

9 (2) the prospective contractor is not currently disqualified from doing business with  
10 the City.

11 [(c) *Emergency.*]

12 [The agency may waive the utilization requirements if it certifies in writing to the Office  
13 that:

14 (1) an emergency exists that requires goods or services to be provided with such an  
15 immediacy that the agency is unable to comply with this chapter; and

16 (2) the prospective contractor will make every good faith effort to subcontract to  
17 minority and women’s business enterprises if subcontracting is utilized.]

18 **§ 28-64.1 WAIVER BY AGENCY – EMERGENCY PROCUREMENTS.**

19 (A) “*EMERGENCY PROCUREMENT*” *DEFINED.*

20 IN THIS SECTION, “EMERGENCY PROCUREMENT” MEANS EITHER:

21 (1) A RAPID PROCUREMENT RESPONSE:

22 (I) THAT IS NECESSARY TO PROVIDE IMMEDIATE RELIEF TO A CRITICAL,  
23 UNEXPECTED EVENT THAT HAS OR WILL HAVE A CATASTROPHIC AND  
24 DIRECT IMPACT ON LIFE, PUBLIC HEALTH, OR PUBLIC SAFETY; AND

25 (II) IF THE RESPONSE WERE TO BE DELAYED, IT WOULD RESULT IN INCREASED  
26 HARM TO LIFE, PUBLIC HEALTH, OR PUBLIC SAFETY; OR

27 (2) A PROCUREMENT RESPONSE THAT IS REQUIRED TO URGENTLY SUSTAIN CITY  
28 INFRASTRUCTURE OR OTHER CORE CITY SERVICES AFTER THE IMMEDIATE  
29 CRITICALITY DESCRIBED IN PARAGRAPH (1) HAS BEEN ADDRESSED.

**Council Bill 20-0605**

1 (B) *IN GENERAL.*

2 (1) A CONTRACTING AGENCY MAY WAIVE THE UTILIZATION REQUIREMENTS FOR A  
3 SPECIFIC EMERGENCY PROCUREMENT CONTRACT IF BOTH THE AGENCY AND THE  
4 COMPTROLLER CERTIFY IN WRITING TO THE OFFICE THAT:

5 (I) THE EMERGENCY PROCUREMENT IS NECESSARY;

6 (II) THE AGENCY HAS MADE THE GOOD FAITH EFFORTS DESCRIBED IN  
7 PARAGRAPH (2) OF THIS SUBSECTION; AND

8 (III) THE PROSPECTIVE CONTRACTOR WILL MAKE EVERY GOOD FAITH EFFORT TO  
9 SUBCONTRACT TO MINORITY AND WOMEN'S BUSINESS ENTERPRISES IF  
10 SUBCONTRACTING IS UTILIZED.

11 (2) PRIOR TO SUBMITTING ANY WAIVER CERTIFICATION TO THE OFFICE, THE  
12 CONTRACTING AGENCY SHALL ENGAGE IN A GOOD FAITH EFFORT TO COMPLY WITH  
13 THIS CHAPTER, INCLUDING:

14 (I) CONTACTING THE OFFICE FOR ASSISTANCE IN EXPEDITED EMERGENCY  
15 MBE/WBE UTILIZATION; AND

16 (II) TO THE EXTENT PRACTICABLE, RECEIVING A QUOTE FROM AT LEAST 1 MBE  
17 AND 1 WBE THAT CAN PROVIDE THE GOODS OR SERVICES NEEDED.

18 (C) *OFFICE COOPERATION.*

19 THE OFFICE SHALL PROVIDE ALL NECESSARY ASSISTANCE TO AN AGENCY IN MAKING  
20 GOOD FAITH EFFORTS TO COMPLY WITH THIS CHAPTER FOR THE EMERGENCY  
21 PROCUREMENT.

22 (D) *POST-EXECUTION REPORT.*

23 (1) *IN GENERAL.*

24 AS SOON AS POSSIBLE AFTER THE EXECUTION OF ANY CONTRACT FOR WHICH A WAIVER  
25 UNDER THIS SECTION WAS NECESSARY, BUT NO LATER THAN 15 DAYS AFTER THE  
26 CONTRACT EXECUTION, THE AGENCY SHALL SUBMIT A REPORT TO THE BOARD OF  
27 ESTIMATES AND THE OFFICE STATING:

28 (I) THE NAME AND ADDRESS OF THE SELECTED CONTRACTOR;

29 (II) WHETHER THE CONTRACTOR IS A CITY-CERTIFIED MBE OR WBE;

30 (III) AN OVERVIEW OF THE NATURE OF THE EMERGENCY AND WHY AN EMERGENCY  
31 PROCUREMENT WAS NECESSARY;

32 (IV) A REASONABLE ESTIMATION OF THE THREAT OR LOSS THAT MAY HAVE  
33 OCCURRED HAD AN EMERGENCY PROCUREMENT NOT BEEN TAKEN;

**Council Bill 20-0605**

1 (V) A SUMMARY OF THE CONTRACTOR’S QUALIFICATIONS, EXPERIENCE, AND  
2 BACKGROUND TO PROVIDE THE EMERGENCY GOODS OR SERVICES AND THE  
3 BASIS ON HOW THE CONTRACTOR WAS SELECTED OVER OTHER QUALIFIED AND  
4 RESPONSIVE POTENTIAL CONTRACTORS;

5 (VI) IF APPLICABLE, A DESCRIPTION OF THE SCOPE OF WORK, INCLUDING THE COSTS,  
6 FEES, OR RATES FOR THE PURCHASE;

7 (VII) IF APPLICABLE, A DESCRIPTION OF THE WORK PERFORMED BY THE  
8 CONTRACTOR TO MITIGATE OR ELIMINATE THE EMERGENCY;

9 (VIII) IF APPLICABLE, A JUSTIFICATION REGARDING WHY AN ADDITIONAL  
10 PROCUREMENT WAS NECESSARY WHEN AN EXISTING CITY CONTRACT MIGHT  
11 HAVE PROVIDED THE GOODS OR SERVICES NECESSARY; AND

12 (IX) A LIST OF ALL POTENTIAL VENDORS CONTACTED, INCLUDING THE MBE AND  
13 WBE CONTACTED UNDER § 28-64.1(B)(2)(II) OF THIS SUBTITLE.

14 (2) *POSTING.*

15 THE REPORT REQUIRED BY THIS SUBSECTION SHALL BE POSTED TO THE OFFICE’S  
16 WEBSITE ON ITS RECEIPT.

17 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance  
18 are not law and may not be considered to have been enacted as a part of this or any prior  
19 Ordinance.

20 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30<sup>th</sup> day  
21 after the date it is enacted.



**TAXATION, FINANCE &  
ECONOMIC DEVELOPMENT  
COMMITTEE**

**AGENCY REPORTS**

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CITY OF BALTIMORE

BERNARD C. “JACK” YOUNG  
Mayor



DEPARTMENT OF LAW  
DANA P. MOORE, ACTING CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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October 13, 2020

The Honorable President and Members  
of the Baltimore City Council  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: Mayor and City Council Bill 20-0605 – Minority and Women’s Business Utilization –  
Emergencies

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0605 for form and legal sufficiency. The bill would insert new language on waivers by agency into Sections 28-64 and 28-64.1 of Article 5 (Finance, Property and Procurement) of the Baltimore City Code. The intent is to make Section 28-64 and the proposed Section 28-64.1 govern the process when an agency contracts for goods or services during an emergency under Section 11(e) of Article VI of the City Charter. That Section of the Charter allows the Board of Estimates or the Department of Finance to allow for non-competitive bidding during an emergency, as determined by the Board of Estimates after considering the recommendation of the Department of Finance. City Charter, Art. VI § 11(e)(i).

The bill, however, does not accomplish its intended goal. The waiver provisions in Section 28-64 of Article 5 of the City Code are for waivers after the award of a competitively bid contract. This part of Article 5 of the City Code only comes into play when an agency needs a waiver of an MWBE goal that was already set for a contract that was awarded.

This means that Sections 28-64 and 28-64.1 in this bill will never apply to contracts that are entered into during an emergency under Section 11(e) of the City Charter because those emergency contracts are not competitively bid.

To accomplish its intended purpose, the bill should be amended as follows:

The brackets around the deletions in Section 28-64 should be removed. Then, Section 28-64.1 (A) on page 2, lines 19 – 29 should be deleted. This makes clear that the bill is not affecting the types of post-award emergencies contemplated in Section 28-64.

Since the intent of the bill is to apply the MWBE utilization requirements to contracts that are not competitively bid due to an emergency as defined in Section 11(e) of the Charter, existence

of which is approved by the Board of Estimates, then the bill needs to refer to that emergency situation in its language. A draft amendment is attached.

Subject to the foregoing amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley".

Hilary Ruley, Chief Solicitor

A handwritten signature in blue ink, appearing to read "Ashlea Brown".

Ashlea Brown, Assistant Solicitor

cc: Dana P. Moore, Acting City Solicitor  
Matthew Stegman, Mayor's Office of Government Relations  
Caylin Young, Director of Legislative Affairs  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor

**AMENDMENTS TO COUNCIL BILL 20-0605**  
(1<sup>st</sup> Reader Copy)

Proposed by: Law Dep't

**Amendment No. 1** – restoring the emergency provisions for contracts that have already been bid

On Page 2 in lines 2 through 17, strike all brackets.

On Page 2 strike lines 18 through 29.

**Amendment No. 2** – creating utilization requirements for contracts not bid due to the BOE approving the situation as a Charter-defined emergency

On page 1, after line 24, add:

*Part V Utilization Requirements*

§ 28-51 [*Reserved*]

- (a) In the event that competitive bids are not obtained due to an emergency in accordance with Article VI, § 11 (e) of the Baltimore City Charter, the Contracting Agency must meet the requirements in Subsection (b) below that will serve as its utilization requirements:
- (b) Emergency Utilization Requirements
  1. Contact the Office for assistance in finding MBE and WBE companies and subcontractors that can supply all or some of what is needed; and
  2. Provide contractors with a list of possible subs that contains at least two MBE or WBEs, if applicable; and
  3. Receive at least one quote from an MBE and one quote from a WBE that can provide the goods or services needed.
- (c) Office Cooperation

The Office shall provide all necessary assistance to an agency in making good faith efforts to comply with this Chapter for the emergency procurement
- (d) Post –Execution Report
  1. In General
    - i. As soon as possible after the execution of any contract for which a waiver under this section was necessary, but no later than 15 days after the contract execution, the agency shall submit a report to the Board of Estimates and the Office stating:
      1. The name and address of the selected contractor;
      2. Whether the Contractor is a City-certified MBE or WBE
      3. An overview of the nature of the emergency and why an emergency procurement was necessary;
      4. A reasonable estimation of the threat or loss that may have occurred had an emergency procurement not been taken;

5. A summary of the contractor's qualifications, experience, and background to provide the emergency goods or services and the basis on how the contractor was selected over other qualified and responsive potential contractor;
6. If applicable, a description of the scope of work, including the costs, fees, or rates for the purchase;
7. If applicable, a description of the work performed by the contractor to mitigate or eliminate the emergency;
8. If applicable, a justification regarding why an additional procurement was necessary when an existing City contract might have provided the goods or services necessary; and
9. A list of all potential vendors contacted, including the MBE and WBE contacted under Subsection (b)(2) above

2. Posting

The report required by this subsection shall be posted to the Office's website on its receipt.