



MEMORANDUM

To: The Honorable President and Members of the City Council
c/o Natawna Austin, Executive Secretary

From: KC Kelleher, Director of Communications, Office of the Comptroller

Date: November 3, 2022

Re: CCB 22-0123R Informational Hearing Streamlining the Procurement Process

The Comptroller's Office respectfully offers the following report on Council Bill 22-0123R, "Informational Hearing Streamlining the Procurement Process." CB 22-0123R requests representatives from the Bureau of Procurement, the Office of the Baltimore City Administrator, the Department of Finance, Baltimore City Information and Technology, and the Office of the Comptroller to provide a comprehensive briefing on the procurement process and any current efforts to improve the process, and to suggest potential innovations and improvements that could be made to Baltimore City's procurement system.

Role of the Comptroller's Office

The Office of the City Comptroller has a relatively narrow but fundamental role in the City's procurement process. The City Charter, Article VI, Section 11(a) explicitly provides that "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." The Charter, in Article VI, Section (a) provides that "one of the members [of the Board of Estimates] shall act as Secretary" to the Board; it has been a longstanding practice for the Comptroller to be the Board's Secretary, and thus certain employees in the Comptroller's Central Office formally function, as part of their official job duties, as staff to the Board. These duties impact the procurement process in two primary ways; first, opening bid submissions at public meetings of the Board; and second, reviewing recommendations for contract awards, extensions or renewals submitted by the Bureau of Procurement for inclusion on the bi-weekly Board of Estimates (BOE) agendas.

The Charter, Article VI, Section 11(h)(1)(i) mandates that "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." Over time, BOE staff has developed specific practices and procedures to conduct bid openings. They occur at 12:00 p.m. on the same Wednesdays when the BOE holds its regular meetings at 9:00 a.m. and are conducted in-person and broadcast live on the City's Charm TV channel (and streamed on the Internet). The Clerk to the Board announces the number and title of each solicitation, then a BOE employee reads aloud the name of each bidder and the bidder's total bid price, if a total price is required by the solicitation. A second employee then verbally confirms the bidder's price and the presence of a bid bond (if required by the solicitation). The results of each bid opening are then posted on the Comptroller's website by close of the business the same day.

The Charter also requires, in Article VI, Section 11(h)(ii), that “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.” In practice, this process of awarding or rejecting bids originates with Bureau of Procurement or the agency that issued the solicitation for bids; a recommendation for award (or for rejection) is submitted to the Board of Estimates. All work undertaken by the Comptroller’s office is guided by the principles of transparency, modernization, and accountability. With these goals in mind, BOE staff reviews every recommended contract award, as well as any extensions of or additions to existing contracts, in meticulous detail, to determine any potential areas of concern and request clarifying information from the submitting agencies. In particular, staff closely examines the following: compliance or non-compliance with minority business goals; explanations and justifications for non-competitive procurements; reasons for submitting a contract after work has begun (i.e. a retroactive contract); and recommended awards to vendors with issues relating to past performance. Any issues are elevated and discussed with the Mayor’s Office through the City Administrator, as well as with the Council President’s staff. If concerns or questions remain unresolved, the Comptroller will designate the recommendation for award or modification to an existing award as a “non-routine item” which means it is subject to a public hearing and a separate vote during a regularly scheduled BOE meeting. The on-the-record discussion during the Board meeting is fundamental to increasing public awareness of, and discourse around, City procurement transactions.

Another fundamental role the Comptroller’s Office plays in the City procurement process relates to the authority of the BOE to promulgate regulations, policies, and guidelines governing procurement process as a whole. Proposals to change these formal policy statements and rules require a collaborative process involving the Bureau of Procurement (BOP), the Law Department, and affected agencies; under the current Administration, however, the Comptroller’s Office has taken the lead role in initiating such collaboration, as will be detailed below.

Current Efforts to Improve the Process

Since December 2020, the Comptroller’s Office has initiated several important policy enhancements that directly affect its role in the procurement process and thereby improve the process as a whole. On January 20, 2022, after eight months of collaborative work including a 30-day public comment period, the Comptroller’s Office obtained BOE approval for the first ever set of Board of Estimates Regulations. The Regulations clarify and standardize the process by which agenda items, including recommendations for contract awards and contract modifications, are approved by the BOE, including clear rules on when and for how long a recommended contract award or other item can be deferred before a final vote.

The Comptroller’s Office successfully concluded a more direct effort to modernize and streamline the procurement process in June 2022, when the BOE approved amendments to the City Procurement Regulations that had been put forward on an emergency basis earlier that year to move the City in the direction of accepting bid submissions electronically. The current bid submission process, which is controlled by the BOP and agencies that issue solicitations for public works projects, requires bidders to physically deliver bulky paper packages to the Comptroller’s Office by a certain due date. Those packages are then placed on metal cart and wheeled into the Board Room at City Hall, to be literally torn open by BOE staff shortly before the noon bid opening session. The requirement for paper bid submissions is cumbersome, wasteful, and egregiously out of step with modern business practices both

in the private sector and at other levels of government. In an attempt to protect the safety and health of both BOE employees and bidder's representatives in the late stages of the COVID pandemic, the Comptroller's Office promulgated a BOE Resolution (approved by the Board on February 2, 2022) that amended the City's Procurement Regulations adopted by the BOE in 2019. The Resolution authorized, among other things, the BOE to accept and open bid submissions electronically or through an automated system and repealed an overly-prescriptive requirement that BOE staff physically position themselves at a fixed location in City at a specified hour on bid due dates to manually receive bid packages. This Resolution, originally adopted on an emergency basis, ultimately took the form of permanent amendments to the Procurement Regulations that were approved by the BOE on June 22, 2022.

Allowing the BOE to receive and open bid submission electronically would be a significant step forward in modernizing City procurement processes. However, development and implementation of an electronic bidding system cannot occur without cooperation from the Administration and especially the BOP and public works agencies. So far, Procurement has flatly refused to move forward with e-bidding and no one in the Mayor's office has been willing to make them.

Another significant effort the Comptroller's Office has engaged in over the last year relates to development of a robust and user-friendly database of transactions approved by the BOE; this encompasses many other matters in addition to procurement transactions, but it unquestionably has made information on contract awards and contract modifications more accessible to members of the public at large. The BOE database, which can be found online at Board of Estimates Database | Baltimore City Comptroller, was implemented in May 2022 and is part of a longer-term, ongoing effort to digitize all Board of Estimates records in a searchable database. While this may seem to be tangential to the City procurement process, in fact it is an easily accessible resource that facilitates tracking spending on contracts as well as quickly and efficiently determining which businesses are submitting winning bids on City solicitations.

Potential Innovations and Improvements

While the City Comptroller's Office has relatively little control (and virtually no day-to-day managerial authority) over "the procurement process," its unique status as the primary support office for the Board of Estimates puts it in a position to examine and evaluate virtually every procurement transaction the City engages in with a value of \$25,000 or more. From this exceptional vantage point, the Comptroller has the opportunity to learn on a regular basis where the City's processes can be improved. The following suggestions are based on review and analysis of hundreds of contract awards and modifications, as well as multiple contacts from City contractors, potential bidders on solicitations, and other stakeholders.

- A. As noted above, the City Charter vests responsibility for "...awarding contracts and supervising all purchasing by the City.." in the Board of Estimates. In practice, the Comptroller's Office has practical responsibility only for bid openings. The Council, perhaps in conjunction with the Mayor's Charter Review Commission, should consider why the bid opening function was separated from the other functions of the Bureau of Procurement and whether the City would be better served by assigning the bid opening function to BOP, or transferring the Bureau of Procurement under the authority of the Comptroller, as is currently contemplated for the

Bureau of Accounts Payable under the Charter Amendment put forward for a vote by the citizens of Baltimore in November 2022.

- B. While that larger structural question is under discussion, the City nevertheless should move forward quickly to implement a system to allow the BOE to receive and open bids using an entirely electronic/automated process.
- C. The thresholds for the Board of Estimates should be codified for transparency. In August 2010, the Baltimore City Council passed a charter amendment to give the City Council sole authority to set the thresholds for the Board of Estimates. It was ratified by Baltimore's voters in November 2010. Article VI, §11 of the City Charter gives this authority. On December 22, 2010, the Board of Estimates passed a resolution to set a threshold of expenditures of contracts that must be formally advertised at more than \$50,000, and contracts for BOE approval at more than \$25,000. This was introduced as part of 21-0041 Board of Estimates - Basic Organization and Procurement Thresholds, but ultimately amended out.
- D. The City should undertake a comprehensive review of its existing laws and the 2019 Procurement Regulations to determine if opportunities exist to modernize and rationalize the procurement process, including on the following specific points:
 - a. Authorizing the City to adopt a "best value contracting" method of selecting bidders, or some similar procurement method other than simply low-bid, especially for construction solicitations and solicitations for other capital improvements.
 - b. Authorizing the Bureau of Procurement to consider a bidder's history of prior performance, including performance issues documented by the City Inspector General or the Law Department, as a factor in determining whether a bidder is "responsible" under the City regulations, and empowering BOP staff to investigate and document instances of contractors' performance issues.
 - c. Authorizing the Bureau of Procurement to communicate with all bidders on a solicitation, including unsuccessful bidders, once BOP submits a recommendation for award to the BOE for inclusion on a Board agenda. Current practice appears to be that unsuccessful bidders receive no communication from BOP until after a recommended award is approved by the BOE. This leads to confusion among bidders, who will often contact the Comptroller's Office for assistance due to BOP's non-responsiveness.
 - d. Currently, the Bureau of Procurement acts largely in a silo, with little to no proactive communication with agencies or vendors. The Administration, acting through the City Administrator or the Director of Finance, should empower BOP staff to communicate proactively and adopt a "customer service" culture that does not reflexively disfavor sharing information.
 - e. Often, when BOP submits items to the Comptroller's Office for processing as part of a BOE agenda, BOP's Board Memos contain minimal description or narrative as to the need for a particular contract and how the winning bidder was determined, or how unsuccessful bidders were disqualified for reasons other than not simply being the lowest bidder (for example, lack of capacity to perform the work or failure to meet minority business goals). The Administration, acting through the City Administrator or the Director of Finance, should empower and train BOP staff to provide more robust narratives for each item submitted to the BOE.

The suggestions listed above are admittedly wide-ranging, but some can be implemented through management directives or changes in practice while statutory and regulatory changes will require intensive collaborative thought and effort. The Comptroller's Office respectfully requests the Committee consider its comments as part of its deliberations on this fundamentally important area of City operations and stands ready to work with the Council and the Administration to affect meaningful improvements.

A representative from the Office of the Comptroller will be present at the hearing for CCB 22-0123R.

CC:

Celeste Amato, Chief of Staff, Comptroller's Office

Adam Abadir, Mayor's Office