

H. Raymond

FROM	NAME & TITLE	Henry Raymond, Director of Finance	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Finance Room 454, City Hall		
	SUBJECT	City Council Bill 20-0605– Minority and Women’s Business Utilization -Emergencies		

TO

DATE:

The Honorable President and
Members of the City Council
City Hall, Room 400

October 15, 2020

Position: Support with Amendments

The Department of Finance is herein reporting on City Council Bill 20-0605, Minority and Women’s Business Utilization -Emergencies, the purpose of which is encourage the utilization of Minority and Women’s businesses in the emergency procurement process.

Background

Under Baltimore City Charter, Article VI, §11. Procurement, all contracts for any public work, or the purchase of any supplies (unless otherwise provided by ordinance for food stuffs and related perishables), materials, equipment, or services other than professional services, involving expenditures above \$25,000 requires formal advertisement and prior approval by the Board of Estimates.

Under §11(e) Emergencies there are two types of emergency circumstances where this requirement does not apply:

(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.*

This legislation attempts to address utilization of Minority and Woman Business Enterprises (MWBE) in the emergency procurement process in two ways. First, through encouraging the development of list of possible subcontractors in the City’s Minority and Woman Business Opportunity Office (MWBOO).

Second, through facilitating transparency by requiring the contracting agency to report on emergency contracts and vendor utilization post execution of the emergency contract.

Fiscal Impact Analysis

The Department of Finance does not anticipate a fiscal impact for the City as a result of this legislation since these responsibilities are only required during emergencies and can be absorbed by current staffing. However, any additional resources needed will be reviewed through the annual budget process.

Other Considerations

In general, the Department of Finance supports the goals of this legislation. The Department of Finance recognizes the importance of advancing equity in procurement by ensuring that MWBE's are able to navigate the contracting process and that emergency procurements, which require a rapid response, do not inadvertently create disincentives or barriers to MWBE participation. In recognition of this, the Bureau Procurement has utilized informal partnerships to achieve these goals. For example, Procurement worked with stakeholders to develop a Critical Supply Warehouse Standard Operating Procedure that sought to coordinate efforts with the Fire Department, Office of Emergency Management, MWBOO and Procurement to develop a supplier list of certified MWBE's capable of supplying emergency response goods and services. Procurement also worked to streamline the vendor sign up process so that potential MWBE's that were identified by the agencies or Procurement were referred to MWBOO to facilitate the enrollment process. This legislation does not alter the duties or operations of the Department of Finance, but does place additional responsibilities on the contracting agencies that have requested emergency procurements and MWBOO in coordinating with these agencies. Depending on how this legislation is implemented, this additional authorization may prolong the process of procuring goods or services.

The Department of Finance had several concerns about the legislation as written, including the variance between the definition in the Charter of an emergency procurement and the definition in this legislation. In addition, there were concerns about whether the legislation as written infringed upon the authority of the Director of Finance to declare an emergency by adding the Comptroller to the process. These two concerns are addressed with the proposed amendments drafted by the sponsor, which the Department of Finance supports. However, there are two concerns that Finance believes the committee should discuss. First, the current legislation requires that agencies submit a written report within fifteen days of the execution of a contract, which is a very fast timeline to meet when addressing and responding to an emergency. Second, this legislation is written to take effect thirty days after enactment, which will be during the current active emergency COVID-19 response. Adding a new process during the active emergency may be a burden for agencies. The City has developed a process throughout this response to better engage MWBE's in the procurement process, which meets much of the intent of this legislation.

Conclusion

The Department of Finance supports the intent of this legislation and has reviewed the amendments from the sponsor. These amendments address many of Finance's concerns, but there are other questions of reporting timelines and effective date that are important for the committee to discuss.

For the reasons stated above, the Department of Finance supports City Council Bill 20-0605 with amendments.

cc: Matthew Stegman
Nina Themelis