

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

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

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

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.

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

[(a) *In general.*]

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

[(b) *Sole source.*]

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

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

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

[(c) *Emergency.*]

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

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

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

§ 28-64.1 WAIVER BY AGENCY – EMERGENCY PROCUREMENTS.

(A) "*EMERGENCY PROCUREMENT*" DEFINED.

IN THIS SECTION, "EMERGENCY PROCUREMENT" MEANS EITHER:

(1) A RAPID PROCUREMENT RESPONSE:

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

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

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

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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;

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(V) 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 CONTRACTORS;

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

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

(VIII) 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

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

(2) *POSTING.*

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

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

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.