
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

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 Tervala, Chief Solicitor

AMENDMENTS TO COUNCIL BILL 20-0605
(1st 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.