

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 20-0605

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

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: October 19, 2020

AN ORDINANCE CONCERNING

Minority and Women's Business Utilization – Emergencies

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 for
certain emergency procurements; requiring that, ~~if an agency receives a waiver for an~~
~~emergency~~ after an emergency procurement, the agency submit a report to the Board of
Estimates and the Minority and Women's Business Opportunity Office; ~~defining certain~~
~~terms~~; providing for a special effective date; and generally relating to greater transparency
and utilization of minority and women's business in City emergency contracting.

~~BY repealing and re-ordaining, with amendments~~
~~Article 5 - Finance, Property, and Procurement~~
~~Section(s) 28-64~~
~~Baltimore City Code~~
~~(Edition 2000)~~

BY adding
Article 5 - Finance, Property, and Procurement
Section(s) ~~28-64~~ 28-51
Baltimore City Code
(Edition 2000)

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

Baltimore City Code

Article 5. Finance, Property, and Procurement

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

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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Part VI. Waivers

Part V. Utilization Requirements

~~§ 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.~~

§ 28-51. EMERGENCIES.

(A) IN GENERAL.

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 SET FORTH IN SUBSECTION (B) OF
THIS SECTION THAT WILL SERVE AS ITS UTILIZATION REQUIREMENTS.

(B) EMERGENCY UTILIZATION REQUIREMENTS.

IF AN EMERGENCY PROCUREMENT UNDER ARTICLE VI, § 11(E) OF THE BALTIMORE CITY
CHARTER IS NECESSARY, A CONTRACTING AGENCY SHALL:

(1) CONTACT THE OFFICE FOR ASSISTANCE IN FINDING MBE AND WBE CONTRACTORS
OR SUBCONTRACTORS THAT CAN PROVIDE THE GOODS OR SERVICES NEEDED;

(2) PROVIDE CONTRACTORS WITH A LIST OF POSSIBLE SUBCONTRACTORS THAT
CONTAINS AT LEAST 2 MBE OR WBES, IF APPLICABLE; AND

(3) TO THE EXTENT POSSIBLE, RECEIVE AT LEAST 1 QUOTE FROM AN MBE AND 1
QUOTE FROM A WBE THAT CAN PROVIDE THE GOODS OR SERVICES NEEDED.

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(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.

AS SOON AS POSSIBLE AFTER THE EXECUTION OF ANY EMERGENCY PROCUREMENT
UNDER ARTICLE VI, § 11(E) OF THE BALTIMORE CITY CHARTER WAS NECESSARY, BUT
NO LATER THAN 30 DAYS AFTER THE CONTRACT EXECUTION, THE AGENCY SHALL
SUBMIT A REPORT TO THE BOARD OF ESTIMATES AND THE OFFICE STATING:

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

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

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

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

(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 SUBSECTION (B)(2) OF THIS SECTION.

(2) POSTING.

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

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

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th 90th
5 day after the date it is enacted.

Certified as duly passed this _____ day of _____, 20____

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this _____ day of _____, 20____

Chief Clerk

Approved this _____ day of _____, 20____

Mayor, Baltimore City