



Legislation Text

File #: 21-0033, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

**City of Baltimore
Council Bill**

Introduced by: Councilmember Ramos

A Bill Entitled

An Ordinance concerning

Imari's LGBTQ Procurement Preference Act

For the purpose of creating a LGBTQ Business Enterprise ("LGBTQBE") Program, to be administered by the Minority and Women's Business Opportunity Office; defining certain terms; establishing the eligibility requirements for firms seeking to participate in the LGBTQBE Program; establishing revocation criteria for firms in the LGBTQBE Program; authorizing the City to employ various affirmative procurement initiatives to promote the award of City contracts to LGBTQBEs; requiring annual reports on the LGBTQBE Program; requiring periodic hearings on and review of the LGBTQBE Program; providing for the appeal of certain adverse determinations by the Minority and Women's Business Opportunity Office; setting certain penalties; correcting, conforming, and clarifying related provisions; renumbering certain sections; and generally relating to City procurement requirements.

By adding

Article 5 - Finance, Property, and Procurement

Section(s) 28-122 through 28-142, to be under the amended subtitle designation,

"Subtitle 28. Minority and Women's Business Enterprises; Small Local Business Enterprises; LGBTQ Business Enterprises" and under the new chapter designation, "Chapter 4. LGBTQ Business Enterprise Procurement Requirements"

Baltimore City Code
(Edition 2000)

By repealing and re-ordaining, with amendments

Article 5 - Finance, Property, and Procurement

Section(s) 28-3(a)(5)(ii), 28-10(b)(6), 28-87(b)

Baltimore City Code
(Edition 2000)

By re-numbering current

Article 5 - Finance, Property, and Procurement

Sections 28-122, 28-123, 28-124

to be Sections 28-145, 28-146, and 28-147, respectively, and to be under the amended chapter designation, "Chapter 5. Penalties"

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; LGBTQ Business Enterprises**

Chapter 1. General Provisions

§ 28-3. Legislative findings and policy.

(a) *Findings.*

(5) A general objective of this subtitle is to provide a narrowly tailored remedy to ongoing effects of past discrimination, an objective that is advanced by:

...

(ii) instituting race- and gender-neutral remedies, including a Small Local Business Enterprise Program and a LGBTQ Business Enterprise Program, in conjunction with the narrowly tailored administration of the MBE/WBE Program;

....

§ 28-10. General functions and duties of Office.

(b) *Specific duties.*

The Office’s duties include:

...

(6) maintaining statistics on and reviewing regularly the progress of agencies towards achieving the annual goals for the utilization of minority business enterprises, women’s business enterprises, small business enterprises, [and] local business enterprises, and LGBTQ business enterprises;

....

§ 28-87. Noncompliance - Contractor or subcontractor.

(b) *Referral to Board of Estimates.*

(1) If the noncompliance cannot be resolved, the Office and the contracting agency must submit written findings and recommendations to the Board of Estimates.

(2) The Board of Estimates may impose sanctions in accordance with Chapter [4] 5 of this subtitle.

Chapter 4
LGBTQ Business Enterprise Procurement Requirements

Part I. Definitions; General Provisions

§ 28-122. Definitions.

(a) *In general.*

In this chapter, the following terms have the meanings indicated unless the context clearly requires a different meaning.

(b) *Affirmative procurement initiative.*

“Affirmative procurement initiative” means a procurement tool authorized by Part IV of this chapter to be used to enhance contracting opportunities for LGBTQ enterprise firms, including bonding and insurance waivers, bid incentives, price preferences, and LGBTQBE evaluation preference points in the scoring of proposal evaluations.

(c) *Commercially useful function.*

(1) “Commercially useful function” means the performance by a business enterprise of real and distinct work for which the business enterprise has the skill, expertise, and actual responsibility to perform, manage, and supervise, as determined by an evaluation of:

(i) the amount of work subcontracted;

(ii) normal industry practices;

(iii) whether the amount the firm is to be paid under the contract is commensurate with both the work it is actually performing and the LGBTQBE credit claimed for its performance of the work; and

(iv) other relevant factors.

(2) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of meaningful and useful LGBTQBE participation, when in similar transactions in which LGBTQBE firms do not participate, there is no such role performed.

(d) *Professional services.*

(1) “Professional services” means any non-construction, non-architectural, or non-engineering services that require highly specialized training or licensed credentials to perform, such as legal, accounting, scientific, technical, insurance, investment management, medical, or real estate services.

(2) The term “professional services” as used in this chapter is not intended to be restricted to those professional services that are exempted from formal advertising requirements pursuant to Article VI, § 11, of the City Charter or competitive bidding requirements pursuant to Article VII, § 17, of the City Charter.

(e) *Services.*

“Services” means non-construction, non-architectural, and non-engineering services that are not

professional services and do not require any license or highly specialized training or credentials to perform.

(F) *LGBTQ business enterprise; LGBTQBE.*

“LGBTQ business enterprise” or “LGBTQBE” means a firm that meets the eligibility requirements specified in § 28-132(b) {“ Eligibility for LGBTQBE Program: General eligibility requirements”} of this chapter.

§ 28-123. Purpose; Scope.

(a) *Purpose.*

- (1) The purpose of this chapter is to establish a race- and gender-neutral remedy for ongoing effects of past discrimination in the marketplace by providing a variety of procurement tools for the City that will ensure that all segments of its LGBTQ business community have a reasonable and significant opportunity to participate in City contracts for construction, architectural, and engineering services, professional services, services, and materials, supplies, and equipment.
- (2) The LGBTQBE Program also furthers the City’s public interest to foster effective broad-based competition from all segments of the vendor community, including minority business enterprises, women’s business enterprises, small business enterprises, local business enterprises, and LGBTQ business enterprises. This policy is, in part, intended to further the City’s compelling interests in both ensuring that it is neither an active nor passive participant in private sector marketplace discrimination, and in promoting equal opportunity for all segments of the contracting community to participate in City contracts.
- (3) The LGBTQBE Program also provides additional avenues for the development of new capacity and new sources of competition for City contracts from the growing pool of LGBTQ businesses. This capacity building will increase the quality of bidding on City contracts and lower prices for City contracts over the long term.

(b) *Scope and limitations.*

This LGBTQBE Program may be applied by the City on a contract-by-contract basis to the maximum practicable extent permissible under federal and state law, as well as the City Charter.

§ 28-124. Program objectives.

To meet the objectives of the LGBTQBE Program, the City is committed to:

- (1) increasing the participation of LGBTQBEs in City contracting and, to the extent possible, ameliorating through race- and gender-neutral means any disparities in the participation of minority business enterprises or women business enterprises on City contracts;
- (2) regular evaluation regarding the progress of the LGBTQBE Program, using accumulated availability and utilization data to determine specific program provisions that require modification, expansion, or curtailment; and
- (3) providing accountability and accuracy in setting goals and in reporting program results through the City’s Centralized Purchasing System, in the Department of Finance, Bureau of Purchases, which maintains a centralized bidder registration process capable of identifying with specificity the universe of firms that are available and interested in bidding on, or performing on, City contracts, and of providing the means of tracking actual City bids, contract awards, and prime contract and

subcontract payments to registered bidders, on the basis of certification status, and commodity or service code.

§§ 28-125 to 28-126. *{Reserved}*

Part II. Administration

§ 28-127. Minority and Women’s Business Office - Duties.

The Office must:

- (1) report at least annually to the Mayor and the City Council on the City’s progress towards satisfying LGBTQBE Program objectives;
- (2) formulate LGBTQBE Program waivers, improvements, and adjustments to the Office’s goal-setting methodology and other program functions;
- (3) have substantive input in the contract specification review process to ensure that contract bid specifications are not unnecessarily restrictive or unduly burdensome to small, local, minority-owned, women-owned, LGBTQ-owned, and other businesses;
- (4) receive and analyze external and internal information, including statistical data and anecdotal testimonies, it deems appropriate to effectively accomplish its duties; and
- (5) adopt rules and regulations to carry out this chapter.

§ 28-128. LGBTQBE program administration.

(a) *Industry categories.*

For the purposes of the administration of this chapter, there are 5 industry categories:

- (1) architectural and engineering;
- (2) construction;
- (3) professional services;
- (4) services; or
- (5) materials, supplies, and equipment.

(b) *In general.*

For each industry category, the Chief of the Minority and Women’s Business Opportunity Office, in consultation with the Chief Purchasing Officer and any other relevant agencies, must:

- (1) establish LGBTQBE participation goals; and
- (2) select appropriate LGBTQBE affirmative procurement initiatives to be applied to each contract, subject to § 28-123(b) {“Purpose; Scope: Scope and limitations”}.

(c) *Considerations.*

In administering this chapter, the Chief must consider:

- (1) vendor availability;
- (2) industry characteristics; and
- (3) project-specific characteristics.

§ 28-129. Program performance review.

(a) *Annual report by Chief.*

The Chief must submit an annual report to the Mayor and City Council that provides an assessment of:

- (1) the progress towards achieving the goals established for awards to certified LGBTQBE firms;
- (2) both dollars awarded and expended through the LGBTQBE Program; and
- (3) the progress towards achieving the stated Program objectives, including:
 - (i) enhancing competition;
 - (ii) establishing and building new business capacity; and
 - (iii) removing barriers to the utilization of LGBTQ business enterprises on City contracts.

(b) *Public hearing every 2 years.*

At least once every 2 years, the City Council must conduct a public hearing to solicit public comments on the LGBTQBE Program.

(c) *Periodic City review.*

The Board of Estimates, or its designee, must periodically review the LGBTQBE Program to determine whether the various contracting procedures used to enhance LGBTQBE contract participation need to be adjusted or used more or less aggressively in future years to achieve the goals stated in § 28-123 {"Purpose; Scope"} and § 28-124 {"Program objectives"} of this chapter.

§§ 28-130 to 28-131. {Reserved}

Part III. LGBTQBE Program Participation Criteria

§ 28-132. Eligibility for LGBTQBE Program.

(a) *"Independently owned and operated" defined.*

In this section, "independently owned and operated" means a firm:

- (1) that is independent and directly owned by individuals only; and
- (2) whose day-to-day management is direct and independent of the influence of any other business that cannot itself qualify under the LGBTQBE eligibility requirements.

(b) *General requirements.*

To be eligible for certification as an LGBTQBE, the business enterprise must:

- (1) be owned by 51% or more by LGBTQ individuals;
- (2) be certified by the National LGBT Chamber of Commerce;
- (3) be an independently owned and operated business enterprise that is not:
 - (i) a broker;
 - (ii) a subsidiary of another business; or
 - (iii) dominant in its field of operation;
- (4) perform a commercial useful function; and
- (5) be located in the Baltimore City Market Area.

(c) *Ineligible firms.*

A business firm is not eligible to become a certified LGBTQBE if it is owned by:

- (i) other businesses that cannot themselves qualify under the LGBTQBE eligibility requirements in subsection (b) of this section; or
- (ii) the principals or owners of other businesses that cannot themselves qualify under the LGBTQBE eligibility requirements in subsection (b) of this section.

§ 28-133. Certification or decertification as an LGBTQBE.

(a) *In general.*

In order to apply for certification or recertification as an LGBTQBE, an enterprise must provide the Office with:

- (1) a completed certification or recertification application in the form required by the Office;
- (2) all supporting documentation required by the Office; and
- (3) a signed affidavit stating that it meets all of the LGBTQBE eligibility criteria set forth in § 28-132 {"Eligibility for LGBTQBE Program"}.

(b) *Recertification.*

Certified LGBTQBEs must submit a completed recertification application to the Office every 2 years for review and continued certification.

(c) *Application review.*

- (1) After receiving an LGBTQBE certification or recertification application, the Office must review all enclosed forms, affidavits, and documentation to make a prima facie determination as to whether the

applicant satisfies the LGBTQBE eligibility requirements as set forth in this chapter.

- (2) If, after the review required by this section, the Office finds that the applying firm satisfies the LGBTQBE eligibility requirements as set forth in this chapter, the Office must grant the firm certified LGBTQBE status.

(d) *Ineligible applicants.*

- (1) If an applicant is determined to be ineligible for certification as an LGBTQBE , the Chief must send a letter to the applicant stating the basis for the denial of eligibility.
- (2) Applicants determined to be ineligible are not eligible to submit a new application until at least 1 year after the date of the notice of denial of eligibility.

(e) *Joint ventures.*

- (1) Joint ventures must be certified on a bid-by-bid basis.
- (2) Each individual business participating in the joint venture must be a certified LGBTQBE in order for the joint venture to receive the benefits of the LGBTQBE Program.

(f) *Certification audits.*

In the course of considering the certification or recertification status of any LGBTQBE firm or joint venture, the Office must periodically conduct audits and inspect the office, job site, records, and documents of the firm, and interview the firm's employees, subcontractors, and vendors as reasonably necessary to ensure that all eligibility standards are satisfied and that the integrity of the LGBTQBE Program is maintained.

§ 28-134. {Reserved}

§ 28-135. Revocation of LGBTQBE eligibility.

An LGBTQBE firm may have its certification and eligibility permanently revoked by the Chief if it:

- (1) fails to perform a commercially useful function under a contract; or
- (2) allows its certified LGBTQBE status to be fraudulently used for the benefit of a non-LGBTQBE firm or the owners of a non-LGBTQBE firm so as to provide the non-LGBTQBE firm or firm owners benefits from affirmative procurement initiatives to which they would not otherwise be entitled.

§ 28-136. Adverse determinations; Appeals.

(a) *Adverse determinations.*

All adverse certification or eligibility determinations by Chief must:

- (1) be in writing;
- (2) include the reasons for the determination; and
- (3) be sent to the affected business enterprise.

(b) *Appeals.*

- (1) An aggrieved party has a right to protest an adverse determination and seek administrative review.
- (2) To obtain administrative review, the aggrieved party must submit a written protest to the Chief within 7 days of receipt of the adverse determination.
- (3) The protest must specify the reasons and factual grounds of the protest and be accompanied by any supporting documents.

(c) *Action by Chief.*

Within 25 days of receipt of the protest, the Chief must:

- (1) review the protest and all relevant supporting documents; and
- (2) render a written decision that includes the reasons for the decision.

(d) *Hearing.*

- (1) After all departmental remedies have been exhausted, the aggrieved applicant may request a hearing before a panel of independent hearing officers, with 1 member of the panel being appointed by the President of the City Council and the other members of the panel being appointed by the City Solicitor.
- (2) The hearing officer must be knowledgeable of Baltimore City procurement laws and procedures, including this subtitle.

§§ 28-137 to 28-138. {Reserved}

Part IV. Affirmative Procurement Initiatives

§ 28-139. Initiatives to be set by Chief.

(a) *In general.*

To promote the award of City contracts to LGBTQBEs, the Chief may, subject to § 28-123(b) {"Purpose; Scope: Scope and limitations"}, authorize the use of any or all of the LGBTQBE affirmative procurement initiatives in this Part IV for contracts in its industry category.

(b) *Dual certification.*

A business who might qualify as any combination of MBE, WBE, SBLE, or LGBTQBE may only select one certification for the purposes of applying for a contract. The participation of the certified firm cannot be split between multiple goals.

§ 28-140. Bonding or insurance waiver.

(a) *Public works contracts.*

(1) *Subject to applicable federal and state law, as well as the City Charter, and*

applicable regulations, policies, and procedures, the Board of Estimates, on the recommendation of the contracting agency, may waive or reduce the bonding or insurance requirements for public works contracts, depending on the type of contract and whether the contracting agency determines that the bonding or insurance requirements would deny an LGBTQBE an opportunity to perform a contract that the LGBTQBE has shown itself otherwise capable of performing.

- (2) From time to time, the Chief shall make written suggestions to a contracting agency relating to concerns about bidding restrictions caused by bonding or insurance requirements on solicitations issued by that agency.

(b) *All other contracts.*

- (1) Subject to applicable federal and state law, as well as the City Charter, and applicable regulations, policies, and procedures, the Board of Estimates, on the recommendation of the Department of Finance, may waive or reduce the bonding or insurance requirements, depending on the type of contract and whether the Department determines that the bonding or insurance requirements would deny an LGBTQBE an opportunity to perform a contract that the LGBTQBE has shown itself otherwise capable of performing.
- (2) From time to time, the Chief shall make written suggestions to the Director of Finance relating to concerns about bidding restrictions caused by bonding or insurance requirements on solicitations issued by the Department of Finance.

§ 28-141 Price preferences.

(a) *In general.*

Subject to § 28-123(b) {"Purpose; Scope: Scope and limitations"}, the Board of Estimates may award a contract to a certified LGBTQBE that submits a bid within 10% of a low bid by a non-LGBTQBE.

(b) *Rejection.*

The Board of Estimates may reject the price preference if it finds that:

- (1) the award to the LGBTQBE would result in a total contract cost that is, on an annual basis, more than \$25,000 higher than the low bid;
- (2) the total contract cost would exceed the City's budgeted funding for the contract; or
- (3) the total contract cost *is determined by the contracting agency, with concurrence from the agency receiving the primary benefit of the contract, to be so high in price as to be not reasonable.*

§ 28-142. Evaluation preferences.

(a) *In general.*

The City may reserve up to 10% of the total points available for RFP evaluation purposes for firms that

are certified as LGBTQBE firms or to joint ventures that have certified LGBTQBE partners.

(b) *Allocation among joint venturers.*

For joint ventures, available evaluation preference points must be allocated on a pro rata basis, based on the percentage of LGBTQBE participation in the overall ownership, performance, and management of the joint venture.

(c) *Limitation.*

An evaluation preference may not be applied if the resulting total contract cost:

(1) would exceed the City's budgeted funding for the contract; or

(2) is determined by the contracting agency, with concurrence from the agency receiving the primary benefit of the contract, to be so high in price as to be not reasonable.

§§ 28-143 to 28-144. *{Reserved}*

**Chapter [4] 5
Penalties**

§ 28-145. [§ 28-122.] **Administrative penalties.**

...

§ 28-146. [§ 28-123.] *{Reserved}*

§ 28-147. [§ 28-124.] **Criminal penalties.**

...

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.