



Legislation Text

File #: 18-0262, 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
(Charter Amendment)**

Introduced by: The Council President
At the request of: The Administration (Mayor's Charter Review Commission)

A Resolution Entitled

A Resolution of the Mayor and City Council concerning
Charter Amendment - Charter Commission Recommendations for Board of Estimates Article

For the purpose of modernizing various public notice provisions, including removing mandatory requirements for notice to be published in a newspaper of general circulation in Baltimore City; creating a process for the Board of Estimates to set the thresholds for contracts required to be formally advertised or be approved by the Board of Estimates; equalizing the requirements for both bids and proposals sought by the City; allow for earlier notice of City contracts; increasing the Board of Estimates flexibility in opening and awarding contracts; establishing a process to allow for more varied forms of bid security rather than just bid bonds; removing certain provisions from the Charter relating to bonding for City employees and the submission of plans to the Board of Estimates that are more appropriately handled by regulation; allowing for the State's Attorney of Baltimore City to be covered by the Compensation Commission for Elected Officials; setting a special effective date; and submitting this amendment to the qualified voters of the City for adoption or rejection.

By proposing to amend

Article VI - Board of Estimates
Section(s) 6(a), 6(b)(1), 11, 14, 16, and 17
Baltimore City Charter
(1996 Edition)

Section 1. Be it resolved by the Mayor and City Council of Baltimore, That the City Charter is proposed to be amended to read as follows:

Baltimore City Charter

Article VI. Board of Estimates

§ 6. Adoption of proposed Ordinance of Estimates.

(a) *Adoption, submission, and publication.*

After the public notice and hearings prescribed by Section 3(b), the Board shall adopt a proposed Ordinance of Estimates by a majority vote of all the members. The Board shall deliver the proposed Ordinance of Estimates to the President of the City Council and contemporaneously publish [a copy of the proposed ordinance in two daily newspapers in Baltimore City] notice in a manner that ensures adequate notice to the public.

(b) *Accompanying materials.*

The proposed Ordinance of Estimates that the Board submits to the City Council shall be accompanied by the following materials:

- (1) a breakdown of the amounts stated for each program, purpose, activity, or project of each municipal agency in the proposed operating budget by standard categories of expenditure, for
 - (a) personal services,
 - (b) materials, supplies, and equipment, and
 - (c) debt service[, and].
 - [(d) such other categories as the Board of Estimates may deem advisable.]

The personal services category shall include the compensation of every officer and salaried employee of the City; provided, however, that the salaries for employees in the same classification who have a uniform salary or salary range may be combined into a single entry, which shall indicate the number of such employees, their aggregate salaries, and the name or title of the classification.

§ 11. Procurement.

(a) *Board of Estimates responsible.*

The Board of Estimates shall be responsible for awarding contracts and supervising all purchasing by the City as provided in this section and elsewhere in the Charter.

(b) *Authority of City Council.*

(1)[*By ordinance passed by two-thirds of]* The Board of Estimates shall recommend to the City Council [*members, the Mayor and City Council shall set*] the dollar thresholds for:

- (i) *contracts that must be formally advertised; and*
- (ii) *contracts that must be approved by the Board of Estimates.*

- (2) Unless an ordinance is adopted by the Mayor and City Council that establishes different dollar thresholds within 90 days of the date of the recommendation required by paragraph (1) of this subsection, the dollar thresholds recommended under that paragraph shall become effective.
- (3) During the 90 day response period set by paragraph (2) of this subsection, the Board of Estimates shall utilize:
 - (i) the threshold amounts set by a Board of Estimates resolution adopted on December 22, 2010; or
 - (ii) the established threshold amounts set later than December 22, 2010 by Board of Estimates resolution or by ordinance.

[(2) Pending enactment of an Ordinance under this subsection, the Board of Estimates shall set initial threshold amounts. Those initial amounts shall remain in effect until different amounts have been set by Ordinance under this subsection.]

(c) *Formal advertisement.*

In contracting for any public work, or the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services other than professional services, for the City or by any municipal agency, involving an expenditure of greater than the threshold set under subsection (b) of this section, advertisements for bids or proposals shall first be published [at least twice in two or more newspapers of general circulation published in Baltimore City, and published electronically to the public, unless otherwise provided by the Charter] in a manner that ensures adequate notice to the public. The first publication shall be made not less than 10 nor more than [90] 120 days prior to the day set for opening the bids or proposals.

(d) *Professional services.*

All professional services contracted for by the City shall be engaged in the manner prescribed by resolution of the Board of Estimates.

(e) *Emergencies, etc.*

- (1)[(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 proposals, 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.
- (2)[(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.

(f) *Contracts subject to Board of Estimates approval.*

All purchases of services other than professional services, of property other than real estate or interests therein (except as may be otherwise provided by ordinance for foodstuffs and related perishables), and all other contracts involving an expenditure greater than an amount set under subsection (b) of this section, except those awarded by the Board of Estimates pursuant to the provisions of subsection (h) of this section, made by any municipal agency, in addition to compliance with other applicable provisions of the Charter, shall be submitted to the Board of Estimates for its approval and shall be binding upon the City only when so approved. The Board of Estimates may adopt rules and regulations governing the procedures and requirements to be followed by any municipal agency in making purchases or other contracts involving an expenditure that does not require formal advertising under subsection (c) of this section.

(g) *Prequalification of bidders.*

In contracting for any public work or the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency, the Board of Estimates may establish, maintain, and modify rules, regulations, and standards for the prequalification of bidders.

(h) *Bid awards.*

(1) (i) All bids or proposals made to the City in response to the formal advertising procedures contained in this section, for materials, supplies, equipment, services, or public works, or for any other purpose, unless otherwise provided in the Charter, shall be opened by the Board of Estimates or the Board's designee.

(ii) [After opening the bids,] Upon receipt of a recommendation of the procuring agency, the Board of Estimates shall:

1. award the contract[,] as an entirety to the lowest responsive and responsible bidder or proposer; [or]
2. award the contract by items to the respective lowest responsive and responsible bidders or proposers; [*or in the case of Requests for Proposals to the highest scoring responsive and responsible bidder, or shall reject all bids. However, whenever alternative bids are invited for two or more different things, then, after all bids have been opened, the Board may select the particular item that will be procured, and shall award the contract to the lowest responsive and responsible bidder or*]
3. *in the case of Requests for Proposals, award the contract to the highest overall scoring responsive and responsible proposer; [bidder for that particular item]*
4. award the contract in any manner authorized by ordinance or by the Board; or
5. reject all bids or proposals.

(iii) Whenever alternative bids or proposals are invited for two or more different things, after all bids or proposals have been opened, the Board may select the particular item that will be procured, and shall award the contract to the lowest responsive and responsible bidder or, in the case of requests for proposals, to the highest scoring responsive and responsible proposer, for that

particular item.

- (iv) In the event of tie bids, the using agency, with written notice to the Department of Finance, shall make a written recommendation and report to the Board of Estimates setting forth all pertinent considerations and the reasons for its recommendation. The Board, after also considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie bid.
 - (v) [(iv)] Once filed, bids or proposals are irrevocable.
 - (vi)[(v)] Any recommendation that is made by any municipal agency to the Board of Estimates as to the appropriate award to be made by the Board is advisory only and not binding on the Board.
 - (vii)[(vi)] Notwithstanding the competitive bid provisions of this Charter, the Board of Estimates may adopt rules and regulations that establish uniform procedures for providing, on a neighborhood service, neighborhood public work, or neighborhood public improvement contract, limited bid preferences to responsive and responsible bidders or proposers who are residents of, or have their principal places of business in, that neighborhood.
- (2) (i) (1) All bids or proposals for construction contracts let for the Department of Public Works, the Department of General Services, and the Department of Transportation and any other contracts for public works shall be accompanied by a [check or bid bond] bid security.
- (2) [For] Subject to Board of Estimates approval, for all other contracts, *the Director of Finance shall implement policies and procedures to determine whether a bid [bond] security is required for a contract, the term and face value of the [bond] security, and the manner in which the [bond] security shall be provided and refunded.*
- (ii) Except as otherwise provided in this paragraph (2), the check shall be a certified check of the bidder or proposer, a bank cashier's check, or a bank treasurer's check, drawn on a clearing house bank. The check shall be in an amount provided by ordinance, by the bid or proposal specifications, or by an order or regulation of the using agency. In the case of bid or proposal checks of \$5,000 or less, the check may be of any type drawn on any banking institution of the United States.
 - (iii) The bid *[bond] security* shall be in the form and amount provided by the rules and regulations of the Board of Estimates, and shall be filed by the bidder with the Department of Finance.
- (3) (i) The successful bidder or proposer promptly shall execute a formal contract, to be approved as to its form, terms, and conditions by the City Solicitor.
- (ii) For all construction contracts let for the Department of Public Works, the Department of General Services, and the Department of Transportation and any other contracts for public works, the bidder or proposer shall execute and deliver to the Mayor a good and sufficient performance bond, irrevocable letter of credit, or certification that the successful bidder or proposer meets the requirements under the City's self-insurance program for performance coverage. For all other contracts, *the Director of Finance shall implement policies and procedures to*

determine whether a performance bond is required for a contract, the term and face value of the bond, and the manner in which the bond shall be provided.

(iii) The bond, letter of credit, or certification shall be:

1. in an amount equal to the full contract price; or
2. for each year in a multi-year contract (other than a construction contract), in an amount equal to the estimated contract price for that year, as determined by the Director of Finance.

(iv) Any successful bidder or proposer who fails to execute promptly and properly the required contract, performance bond, irrevocable letter of credit, or certification, as applicable, shall forfeit the amount deposited, or an equivalent amount under the bid [bond] security. This amount shall be taken and considered as liquidated damages and not as penalty for the bidder's or proposer's failure.

(4) When the successful bidder or proposer executes the contract and, if required, the performance bond, the bid checks shall be returned to all bidders or proposers, or the equivalent amounts charged against their bid [bond] security shall be released. If the City has deposited bid checks, the City shall reimburse these bidders or proposers in the amounts of the bid checks.

(5) If a bidder or proposer is not required to file a bid [bond] security under the policies and procedures adopted by the Director of Finance and the bidder or proposer fails to execute and perform any contract awarded to that bidder or proposer, the exempted bidder or proposer shall forfeit the right to bid on, or submit a proposal for, any future City contract for a period of time determined by the Board of Estimates, and shall be liable for any costs incurred by the City as a result of the default.

(i) *Local, small, and disadvantaged business enterprise programs.*

The Mayor and City Council may, by ordinance, establish programs that grant purchasing preferences to local, small, or disadvantaged businesses and, for that purpose, waive or modify the application of this section (with the exception of subsection (a)) to certain transactions.

§ 14. [Bonds of municipal officers.]

[Except as otherwise provided by State law, the Board of Estimates shall determine which officials of the City shall be bonded for the faithful performance of their duties and the form and amount of such bonds. All premiums on official bonds shall be paid by the City. All bonds executed in favor of the City shall be approved by the Mayor.]

§ 16. [Salaries of State's Attorney's Office.]

[The Board of Estimates is hereby authorized and empowered to fix the salaries of the State's Attorney, the Deputy State's Attorney, and Assistant State's Attorneys of Baltimore City, in amounts not less than those prescribed by the Constitution of Maryland.]

§ 17. [Expenditures for new improvements.]

[Except as provided in Section 61 of Article VII, no expenditure for any new improvement shall be made

out of any appropriation in the Ordinance of Estimates unless the plans for such improvement are first submitted to and approved by the Board of Estimates.]

Section 2. And be it further resolved, that these amendments to the City Charter shall become effective on January 1, 2020.

Section 3. And be it further resolved, That this proposed amendment to the City Charter be submitted to the legal and qualified voters of Baltimore City, for adoption or rejection, in accordance with Article XI-A, § 5 of the Maryland Constitution, in the form specified by the City Solicitor.