



City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Legislation Text

File #: 07-0712, **Version:** 0

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL
(Charter Amendment)

Introduced by: The Council President
At the request of: The Administration (Department of Finance)

A RESOLUTION ENTITLED

A RESOLUTION OF THE MAYOR AND CITY COUNCIL concerning **Charter Amendment - Procurement**

FOR the purpose of updating the rules governing the procurement of public works, supplies, materials, equipment, or services; authorizing the adjustment from time to time, by Ordinance, of certain threshold dollar amounts; modifying the advertising requirements; authorizing certain performance bonds, letters of credit, or certifications to be on an annual contract-price basis; correcting, clarifying, and conforming certain language; and submitting this amendment to the qualified voters of the City for adoption or rejection.

BY proposing an amendment to
Article VI - Board of Estimates
Section(s) 11
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

§ 11. Procurement.

(a) (1) The Board of Estimates [shall be] IS responsible for awarding contracts and supervising all purchasing by the City, as provided in this section and elsewhere in the Charter.

(2) BY ORDINANCE, THE MAYOR AND CITY COUNCIL MAY ADJUST ONE OR MORE OF THE DOLLAR AMOUNTS SPECIFIED IN THIS SECTION FOR DETERMINING WHICH CONTRACTS OR PURCHASES REQUIRE CERTAIN APPROVALS, PUBLISHED ADVERTISEMENTS, OR OTHER PROCEDURES.

(b) (1) [(i)] In contracting for any public work[,] or FOR the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services (other than professional services)[,] involving an expenditure of [twenty-five thousand dollars] \$25,000 or more, for the City or by any municipal agency, [advertisements] REQUESTS for proposals shall [first] be [published] ADVERTISED, UNLESS OTHERWISE PROVIDED IN THIS CHARTER, at least [twice] ONCE in two or more daily newspapers [published] OF GENERAL CIRCULATION in Baltimore City[, unless otherwise provided by the Charter].

(2) The first [publication] ADVERTISEMENT shall be made not less than [ten] 10 nor more than [ninety] 90 days [prior to] the day set for opening [the] bids.

[(ii)] The City Council, by ordinance adopted by a majority of the members, may increase or decrease the dollar amounts provided in this subsection (b) for contracts requiring published advertisements.]

(3) [(iii)] The contract for any public work or FOR the purchase of any supplies (unless otherwise provided by ordinance for foodstuffs and related perishables), materials, equipment, or services (other than professional services) [,] involving an expenditure of [five thousand dollars] \$5,000 or more shall be made by the Board of Estimates in the manner provided in subsection (g).

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

(d) (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 when the need for [such] THOSE 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 (b) may be dispensed with, but [such] THE purchase [shall] MAY not be made, nor [shall] MAY the City incur any obligation [therefor] FOR THE PURCHASE, until approved by the Board of Estimates after considering the recommendation of the Department of Finance.

(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] ON 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 (b)[;]. [a] A full report of [any such] THAT action shall be promptly submitted to the Board of Estimates.

(e) (1) All purchases of services (other than professional services), of property other than real estate or interests [therein] IN REAL ESTATE [(except as may be otherwise provided by ordinance for foodstuffs and related perishables),] and all other contracts (EXCEPT AS MAY BE OTHERWISE PROVIDED BY ORDINANCE FOR FOODSTUFFS AND RELATED PERISHABLES) involving an expenditure of more than \$5,000 and less than \$25,000, except those awarded by the Board of Estimates [pursuant to the provisions of] UNDER subsection (g), 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] ON the City only when so approved.

(2) 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 of less than \$25,000.

(f) In contracting for any public work or FOR 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.

(g) (1) (i) All bids 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.

(II) [The] AFTER OPENING THE BIDS, Board of Estimates[, after opening the bids,] shall award the contract, as an entirety to the lowest RESPONSIVE AND responsible bidder[, or by items to the respective lowest RESPONSIVE AND responsible bidders, or shall reject all bids[;]. [provided, however, that] 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 thing [which shall] THAT WILL be procured, and shall award the contract to the lowest RESPONSIVE AND responsible bidder for that particular thing.

(III) 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, [provided that] AS LONG AS the total cost to the City [shall] DOES not exceed the amount of the tie bid.

(IV) [Bids when] ONCE filed, [shall be] BIDS ARE irrevocable.

(V) Any recommendation [which may be] THAT IS made by any municipal agency to the Board of Estimates as to the appropriate award to be made by the Board [shall be] IS advisory only and not binding [upon] ON the Board.

(VI) Notwithstanding the competitive bid provisions of [the] THIS Charter, [after making appropriate findings,] the Board of Estimates[, by uniform rule or regulation,] may [provide] ADOPT RULES AND REGULATIONS THAT ESTABLISH UNIFORM PROCEDURES FOR PROVIDING, [a limited bid preference to a responsible bidder] on a neighborhood service, neighborhood public work, or neighborhood public improvement contract, LIMITED BID PREFERENCES TO RESPONSIVE AND RESPONSIBLE BIDDERS [if that responsible bidder is a resident] WHO ARE RESIDENTS of, or [has its] HAVE THEIR principal [place] PLACES of business in, that neighborhood.

(2) (I) [(ii)] All bids shall be accompanied by a check or a bid bond.

(II) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH (2), THE check shall be a certified check of the bidder, a bank cashier's check, or a bank treasurer's check, drawn [upon] ON a clearing house bank. The check shall be in an amount provided by ordinance, by the bid specifications, or by an order or regulation of the using agency. In the case of bid checks of \$5,000 or less, the check may be of any type drawn [upon] ON any banking institution of the United States.

(III) The bid bond shall be in the form and amount provided by THE rules and regulations [adopted by] OF the Board of Estimates, and shall be filed by the bidder with the Department of Finance.

(3) (I) [(iii)] The successful bidder promptly shall execute a formal contract, to be approved as to its form, terms, and conditions by the City Solicitor, and [such] THE bidder shall also execute and deliver to the Mayor[, in the amount of the contract price,] a good and sufficient performance bond, irrevocable letter of credit, or certification that the successful bidder meets the requirements under the City's self-insurance program for performance coverage.

(II) 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.

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

(4) [Upon the] ON execution of the contract and bond by the successful bidder, the bid checks shall be returned to all bidders, or the equivalent amounts charged against their bid bond shall be released. If the City has deposited bid checks of \$5,000 or less, the City shall reimburse these bidders in the amounts of the bid checks.

[If an exempted bidder fails to execute and perform any contract awarded to that bidder, the exempted bidder shall forfeit the right to bid on 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.]

(5) (I) [(iv)] The Director of Finance, with the approval of the Board of Estimates, may [declare] EXEMPT FROM THE BID BOND AND PERFORMANCE BOND REQUIREMENTS OF PARAGRAPHS (2) AND (3) OF THIS SUBSECTION the procurement of any standard items of commerce and services THAT ARE from standard trades and professions[, which are] AND not altered or customized to unique City specifications[, to be exempt from the bid bond and/or performance bond requirements of subsections (ii) and (iii)]. [This subsection is controlling with respect to bid and performance bonds for those items and services which are exempted under its provisions.]

(II) If an [exempted] bidder EXEMPTED UNDER THIS PARAGRAPH fails to execute and perform any contract awarded to that bidder, the exempted bidder shall forfeit the right to bid on 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.

(h) (1) [(i)] Notwithstanding any other provision of this section, a bidder on a contract for any public work or FOR the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency[,] is not required to post a bid bond if the bid is equal to or less than the amount authorized by ordinance.

(2) [(ii)] Notwithstanding any other provision of this section, a contractor on a contract for any public work or FOR the purchase of any supplies, materials, equipment, or services for the City or by any municipal agency[,] is not required to post a performance bond if [such] THE contract is for an amount equal to or less than the amount authorized by ordinance.

(3) [(iii)] At [such] ANY time [as] THAT the value of the contract, through amendment or adjustment, including

changes in scope or in estimated quantities, exceeds the authorized amount, the contractor shall be required to post a performance bond in the amount of 100% of the value of the contract in excess of the authorized amount.

(4) (I) [(iv) Upon] ON a finding that one or more of the following conditions exist, the Board of Estimates may require bidders to post bid bonds with their bids and performance bonds with the execution of contracts otherwise exempt from [such] THESE requirements:

1. the contract is for the purchase of goods to be specially manufactured or assembled or [which are] otherwise not normally available in suppliers' inventories;
2. the contract involves services [which] THAT, if improperly or inadequately performed, pose a substantial risk of injury to persons or damage to property, with potential liability or loss in excess of \$100,000;
3. the BIDDER OR contractor [and/or bidder] has no prior record of performance by which the Board of Estimates may use to determine the contractor's or bidder's ability to perform.

(II) [(v)] [Where any condition listed above] IF ONE OF THESE CONDITIONS is [found to exist prior to] DISCOVERED BEFORE advertising, the advertisements and specifications shall state the bond requirements.

(5) [(vi)] No payment or partial payment [shall] MAY be made to a contractor proceeding without a bond under this section unless and until evidence satisfactory to the Director of Finance is presented [showing] that:

1. the contractor has completed the contract or portion [thereof] OF THE CONTRACT for which payment or partial payment is sought, in accordance with the terms of the contract and satisfactory to the [Contract Compliance Officer] USING AGENCY and [either] the [Purchasing Agent or City Engineer] DIRECTOR OF FINANCE, and
2. [that] the contractor is entitled to the payment or partial payment.

SECTION 2. 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.

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