

RESOLUTION
OF
THE BOARD OF ESTIMATES OF BALTIMORE CITY
RELATING TO NON-COMPETITIVE PROCUREMENTS

WHEREAS, the City Charter requires, with certain exceptions, that all contracts involving an expenditure greater than \$50,000 be awarded by the Board of Estimates through a competitive bidding process; and

WHEREAS, Article VI, § 11(e)(i) of the Charter of Baltimore City, 2016 edition, as amended (hereinafter referred to as “Charter”), provides that:

“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 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.”; and

WHEREAS, Article VI, § 11(e)(ii) of the Charter further provides that:

“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.”; and

WHEREAS, while non-competitively procured contracts are sometimes necessary to provide critical City services, they inherently limit competition; and

WHEREAS, promoting and maximizing competitive bidding generally results in better prices, a more inclusive procurement process, and a growing local economy; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ESTIMATES OF BALTIMORE CITY, that on this _____ day of _____, the following Resolution is adopted:

I. Definitions. For the purpose of this Resolution, the following terms have the meaning indicated.

A. Board. Board means the Board of Estimates.

B. City Agency. City agency includes all City departments, bureaus, boards, commissions, and persons not embraced in a department who exercise authority comparable to that of heads of departments or bureaus.

C. Competition. Competition means the process by which more than one source for supplies, materials, equipment, services, or public works is solicited.

D. Emergency Procurement. An emergency procurement means a procurement in response to a dangerous condition of such a nature that public welfare would be adversely affected by awaiting the approval of the Board of Estimates.

E. Non-competitive Procurement. Non-competitive procurement means a procurement of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive responses, or when the need for supplies, materials, equipment, services, or public works is of an emergency nature.

F. Procurement.

1. Procurement means purchasing, leasing, or otherwise acquiring any supplies, materials, equipment, services, or public works including all functions that pertain to the obtaining of any supplies, materials, equipment, services, or public works, including the description of requirements, selection and solicitation of sources, evaluation of responders, preparation and award of contract, claim resolution, and all phases of contract administration.

2. A grant is not a procurement.

G. Professional Services.

1. Professional services are services that are predominantly mental or intellectual, rather than physical or manual, and require the application of special knowledge and technical skill, as well as the experience that comes from instruction, training, and the exercise of mental facilities.

2. Professional services include the services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated instead of competitively procured because of the individuality of those services and level of expertise involved.

H. Public works.

1. Public works means construction, reconstruction, demolition, or maintenance of a physical structure that is attached to the land which is:

- a. Primarily for public use;
- b. Government owned or operated;
- c. Accessible to the general public; or
- d. Government funded, wholly or in part, with no one factor being controlling.

2. Public works include public buildings, recreation fields, docks, bridges, ditches, roads, alleys, waterworks, storm drains, sewers, conduit, street lights, and sewage disposal plants.

II. Requirements for Non-Competitive Procurements.

A. Except for emergency procurements and professional services, when a City agency recommends the Board award a non-competitive procurement, the agency shall provide the following information to the Board in writing:

1. An explanation as to why no advantage would result in seeking competitive responses;
2. An explanation as to why it is impracticable to obtain competitive responses; or
3. An explanation as to why the procurement is of an emergency nature.

B. For emergency procurements, see “Regulations on Procurement, Protests, Minority and Women-owned Business Enterprise, and Debarment/Suspension” adopted by the Board and effective _____, as amended from time to time.

C. For Professional services, see “Resolution of the Board of Estimates of Baltimore City Relating to Non-Architectural or Engineering Professional Services” adopted by the Board and effective _____, as amended from time to time.

III. Evaluation of Process.

A. No later than nine months after the effective date of this Resolution, an evaluation committee shall submit a report evaluating the process specified in this Resolution.

B. The evaluation committee shall consist of the following individuals:

1. The Mayor or the Mayor's designee;
2. The City Council President or the City Council President's designee;
3. The Comptroller or the Comptroller's designee;
4. The City Solicitor or the City Solicitor's designee;
5. The Directors or their designees from three of the following four Departments, as chosen by the Mayor:
 - a. The Department of General Services;
 - b. The Department of Public Works;
 - c. The Department of Transportation; and
 - d. The Department of Recreation and Parks.

6. The City Purchasing Agent or the City Purchasing Agent's designee; and
7. The City Auditor or the City Auditor's designee.

C. The evaluation committee shall include the following information in its report to the Board:

1. The number of non-competitive procurements submitted and considered by the Board since the effective date of this Resolution;
2. A determination as to whether the explanations from City agencies for recommending awarding non-competitive procurements are sufficient; and
3. A recommendation on possible changes to the process for awarding non-competitive procurements.

D. The evaluation committee shall submit the report to the Board only when a majority of the committee members endorse the report in writing.

E. An evaluation committee member or members who do not endorse the report shall provide an explanation in writing to the Board concurrently with the committee's report.

VII. Effective Date. This resolution shall take effect upon adoption by the Board of Estimates.

